AN INTRODUCTION TO THE HISTORY OF LIFE ASSURANCE

A. FINGLAND JACK

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BY

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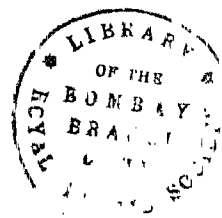

LONDON
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To

MY FATHER

FROM WHOSE SYMPATHY AND GENEROSITY

THIS WORK COULD NOT HAVE

BEEN BEGUN.

PREFACE

In presenting the following study, which was begun in Berlin some four years ago, I wish merely to forestall such criticism as might result from a misconception of its scope and intention. My object (and I have sought to emphasise this in my choice of a title) has not been to write a history of Life Assurance—that remains still to be done; but I have endeavoured to prepare the way, in some measure, by an examination of certain main factors in the development of the insurance idea. I have thought it necessary to devote a large portion of the book to a consideration of the Gilds, because the relief for which they were responsible was so much a part of their nature that to seek to deal with it without reference to general development and characteristics would lead to wrong impressions.

The list of works given is by no means intended as a comprehensive survey of the literature on the subject: I have simply mentioned those sources to which I have had occasion to refer specifically in the footnotes. The most obvious omissions, however, are probably two valuable English works which have recently appeared, namely, Mr. George Unwin's *Gilds and Companies of London*, and Volume III. of Dr. W. R. Scott's *Constitution and Finance of English, Scottish, and Irish Joint-Stock Companies to 1720*; neither of these, I regret to say, came into my hands until after my essay was complete.

It only remains for me to offer my very sincere thanks to those who have given me most valuable help. Professor

Chapman has for a number of years afforded me the benefit of his counsel and encouragement, and I am glad to have this opportunity of expressing my appreciation of both; I am also much indebted to Mr. J. H. Clapham for his helpful advice and criticism. Miss A. G. Hunter has assisted me very much in the collection and transcription of my notes. Finally, the book owes a great deal to the many suggestions of Miss A. Shillington, who revised the whole of the manuscript for me, in addition to correcting the proofs. The faults are my own.

A. FINGLAND JACK.

TRINITY COLLEGE, CAMBRIDGE,
March 25, 1912.

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CHAPTER I

GENERAL REMARKS[1]

"INSURING of life I cannot admire," wrote Defoe at the close of the seventeenth century. "I shall say nothing to it, but that in Italy, where stabbing and poisoning is so much in vogue, something may be said for it, and on contingent annuities, and yet I never knew the thing much approved on any account."[2] And yet, strangely enough, it has proved to be in those very countries where the custom of poisoning and stabbing has been least in vogue, that life assurance[3] has sprung up earliest and thriven most. One would indeed almost be tempted to aver that the converse of Defoe's

[1] Cf. Cohn, *System der Nationalökonomie*, pp. 648, 649; Ehrenberg, *Studien zur Entwicklungsgeschichte der Versicherung*, i. 2. pp. 101–7; Ehrenberg, *Versicherungsrecht*, pp. 29–34; Elster, *Lebensversicherung in Deutschland*, pp. 1, 2; Endemann, *Wesen des Versicherungsgeschäftes*, ix. pp. 513–16; Gebauer, *Sogenannte Lebensversicherung*, p. 34; Jónás, *Studien und Vorschläge*, pp. 9, 10; Lamprecht, *Deutsche Geschichte*, iii. pp. 24,. 25; Lewis, *Lehrbuch des Versicherungsrechts*, p. 2, note 5; Manes, *Versicherungswesen*, pp. 17, 56, 181, 182, and article "Versicherungswesen" in the *Wörterbuch der Volkswirtschaft*, vol. ii.; Roscher, *System der Volkswirtschaft*, i. pp. 718, 719; Rüdiger, *Rechtslehre vom Versicherungsvertrag*, pp. 1–7, and *Versicherungswesen*, pp. 1, 2; Wirth, *Grundzüge der National-Oekonomie*, i, p. 526.

[2] Defoe, *Essay upon Projects*, p. 79.

[3] The terms "assurance" and "insurance" are synonymous, and no consistent distinction in usage obtains. Cf. Walford, *Insurance Cyclopædia*, i. pp. 205–7.

proposition is true, and that only where human life is fairly secure can the institution flourish. Without doubt such an assertion would be correct in part, but it must be borne in mind that whilst probably all advance in society has meant an increase of the dangers of life, or at any rate a multiplication of the kinds of dangers, it is the modern era with all its perils which has produced any extensive use of life assurance. On the other hand, its appearance and special success in those lands where the rude manners of seventeenth-century Italy were least encouraged, may justly be attributed to the circumstance that the state of public opinion in a country towards "stabbing and poisoning" is, after all, a fairly reliable index of its general culture and the likelihood of its adopting new economic arrangements.

For life assurance is above all things an economic arrangement—the great problem which it has set out to overcome is that of the economic disturbances which the natural uncertainty of life brings in its train. I say "natural uncertainty," because that is after all the crucial matter; the kind or even the degree of the dangers which accentuate that natural uncertainty, whether they be the stiletto or the live electric wire, is, within limits, unimportant. True it is that a point may be conceived where these incidental dangers become so great as to put life assurance out of the question, but it is not certain that if the perils of life in general were augmented by fifty per cent. to-morrow, the extent of the practice would be materially affected. If then what is really in question is a remedy for a matter which has ever been before men's eyes, how is it that the discovery of that remedy has been so long delayed? Or has the need been met in earlier times in some different manner?

A common danger, present and tangible, will

invariably bring about some sort of union to meet it, on the part of those who are exposed to it. To combine to meet the common foe is merely to respond to the blind desire for self-preservation; to seek to further common interests by common action at other times is the response to an instinct more remote. And yet to such an extent are both inherent in human nature, so largely are they bound up with the needs of society, as to have led everywhere to the forming of Peoples and States. It is, however, a decided step in advance when a number of persons agree to make common cause in regard to dangers which are uncertain in time and which, whilst threatening all, are individual in operation. This idea is the answer to no primitive instinct, it is enforced by no law of necessity.

If then we find it in the early family community, it is because there the interest of the individual cannot be separated from that of the group; there the concept of individual rights and individual property can never come to any growth. But the family bond could not last for ever, and when the laws of change had only operated so far as to substitute the tribe for the family as the factor in economic life, this feeling of close mutual responsibility in general was becoming weaker. It certainly survived still in matters which could be regarded as being of public import—in a much wider sense, naturally, than we understand the term to-day—but an area was gradually being circumscribed, as it were, within which affairs were personal and responsibility likewise.

And so, the wider communities became, that is to say, the further they departed (as they continued to do) from the example of the family, the less likely was this idea to remain as an influence. It is all the more surprising, therefore, to find it later at the very foundation of a great artificial structure,

that structure which we know and admire as the Gild System. Not the least of the many services of the gilds has been to conserve and develop a principle which otherwise might well have been lost for centuries. As we shall see, it was largely a matter of religion with them, though probably too they were prompted in some degree by a sub-conscious realisation of what was at the time possibly the best means of meeting a personal need. Instinct will often lead men to enter into relationships which tend to the common weal, without their having of necessity any very real regard for the common weal, for the age has not yet been which has not been dominated by self-interest.

Social progress has been largely along the lines of specialisation, a principle which is here illustrated. Born into the family group, the primitive man depended upon it to meet all his temporal needs—it made itself entirely responsible on every count. The tribe, in its turn, undertook the public responsibility, but tended to recognise a sphere of private interests where it refused to concern itself, which remained, therefore, the business of the family so far as that inner group survived as an influence. Born in a much less complete sense into the gild, the individual, now that the family could no longer be relied upon to bear his burdens, found in this artificial relationship something to take its place. Naturally it was a weaker bond, and as a consequence the protection afforded was less complete, though still extraordinarily complete to our eyes. With time the Crown took over many of the main cares of the frith gilds; the municipalities and the craft gilds divided between them most of the functions of the merchant gilds, and finally Church and State assumed the charge of the majority of those matters which had occupied the

craft and the social-religious gilds. Ultimately it came to be realised, without doubt vaguely and but half-consciously, that, whatever the gilds had done, there were certain dangers and disadvantages besetting the individual against which neither Church nor State made adequate provision. With the great increase which was taking place in wealth, men were exposed to ever greater embarrassments in their material affairs by reason of eventualities which they were powerless either to ward off or to foretell with accuracy. The gilds, with all their inefficiency, had at any rate given a sort of general, oft-times very scant, protection against the most of these, and nothing had been offered to replace it. There was a twofold result, or perhaps more accurately one result with a two-fold aspect. For on the one hand new groups came into being, gilds or gild-like but distinguished from the late gilds by this, that they were no longer all-embracing, but were formed for a specific object, were it to pay sums when fires occurred or to pay sums at death ; and on the other hand began to be born, slowly and very painfully, but destined to greatness, the modern system of insurance.

One, certainly, of the essential differences between modern insurance and the old gild system lies in the fact that whereas the latter consisted of a series of many groups separated, sometimes alienated, from each other by various distinctions which determined the grouping and formed the internal bond of union in each individual case, whether it was a uniformity of class or calling or merely of locality, the modern insurance system recognises none of these distinctions—in the formation of its groups it is concerned only with the nature of the risk to be insured against : fire, shipwreck, premature death, or what not. Subject to that consideration the group embraces all classes and callings, and

its scope is world wide.[1] And what is at the root of the difference is simply this, that in the gilds the members stood side by side as individuals, they formed a personal relationship, and sought by combining to guarantee their whole lives so far as possible; whilst in modern insurance companies we have an association of capital rather than of persons, and the aim is the meeting of a certain well-defined and calculable danger. Naturally, therefore, the scope of the former was restricted and local; just as naturally the scope of the latter is unrestricted and universal.

But it is to modern capitalism more than anything else that we owe the insurance fabric as it stands to-day. Whatever mutual arrangements may have done in fostering and cultivating the insurance idea, it has only realised itself adequately by means of the modern business spirit. That side which earliest developed, concerned with marine risks, did so as a commercial undertaking, and, as we shall observe, life assurance in England only came into its own when those same principles were applied to it. In the case of fire insurance, notably in Germany, the State has played its part in the educating of public opinion; in life assurance the self-interest of the private companies, of which even those constituted on a mutual basis were conducted on strictly business lines, has done the work largely unaided.

At the same time, just as Association was

[1] There are, of course, limitations. A few companies are confined to some particular class or calling; the whole system of Industrial Insurance is based on a distinction of this kind, and so on. Within the individual concerns there is no end to the sub-dividing for the purposes of statistics and rating. On the other hand, most offices as a matter of fact transact more than one sort of insurance, though the books and accounts are kept separate. But the principle of modern insurance is that stated in the text.

ineffectual until placed on a capitalist footing, so mere commercial arrangements, apart from Association, could never be Insurance. The isolated quasi-insurance contracts which were known even in early times and which, regarded from one side only, were actual insurance, came short of the real thing just because the loss still remained an individual one. To spread this loss over as large a number as possible, to get, that is, a great many people to join together in the matter (a process which the practice of "reinsurance," whereby you increase enormously your community of interests, may be said to have perfected) was one of the great aims of insurance. The individual, his weakness and his personal danger, sunk more and more from view; the strength of the whole, the very cause of its solidarity, is this weakness of its parts.

As long as the domination of the Canonist Doctrine lasted, with its insistence on the barrenness of capital, capitalistic insurance was out of the question. By degrees, however, the Church yielded to the pressure of economic forces, and receded step by step from her first uncompromising position.

There was no sudden casting overboard of the principle which Council after Council had reaffirmed, but slowly and surely the attitude of men's minds changed with changing conditions; something was conceded here and something more there, business came increasingly under the influence of insurance-like arrangements—all that was lacking in fact for the rise of true insurance was the form which would enable it to unfold as an actual business, independent, self-contained. The time came at last: the canonist theories were quite dead, and throughout all branches of industry and commerce capitalist association was adopted in universal use. Not that it can be said

that life assurance was prompt to profit by the occasion. It was long before the weapon was grasped, longer still before it was used to real purpose.

The adaptation of economic remedies to social needs is a process which is, possibly, certain enough in the long run, but which is rapid or slow according to circumstances. Other things being equal, a keen public consciousness of the need will undoubtedly have an accelerating influence, whilst the existence of even a poor substitute for a remedy will have a retarding influence by dulling that consciousness. If it be strictly accurate to say that any economic need can exist before there is some consciousness of it in the public mind, then the need for life insurance is many generations older than even the first tentative movements towards its provision. True, in very early times, as we have already noticed, when public and private interests were inseparable in a sense which does not apply to-day; when individual losses were repaired by common effort; when personal responsibility within the group did not exist in material matters, and friendly intercourse outside the group was all but unknown, there was no basis for insurance of any kind. But when all this had long since altered; when the gilds had come to supersede the family bond and in their turn had passed away; when it could be so clearly seen that substitutes for them were either entirely lacking or sadly inefficient; how was it that even then—with the lesson already learnt (thanks to the gilds) of the naturalness of the notion of applying the excess of present gains to securing the future—modern life assurance was yet so slow in coming to maturity?

If we glance for a moment at the course of marine insurance we find that already it is refusing to be a mere underling in the employ of trade, and

is claiming the rank of a self-supporting business, while life assurance remains still inert. And yet the need represented by the one was limited to a comparatively small class of men of some substance, whilst that represented by the other was universal, and in addition bore hardest on the least favoured classes. Which was likely to be most in the public consciousness? For which was the remedy most likely to be hindered by the existence of a substitute?

It is one of the ironies of social facts that so often those who are in the greatest need realise it least —and indeed the urgent necessity for some system, whereby the uncertainty of life could be neutralised in the economic sphere, largely remained unnoticed, whilst the uncertainty of the winds and waves was exercising not a little the minds of those whose ships and merchandise were at the mercy of them. As for the other point, if we agree that the gilds for ages barred the way to the coming of true insurance, then the hindrance was likely to be less effective in the case of marine than life insurance, because they exercised on the whole a smaller influence on the rich than on the poor.

Probably less the extent than the kind of the need had influence in the determining of the matter. The loss of ship or cargo was something very tangible which befell some and passed by others. The idea of a sharing of the risk in such a manner that fortunate and unfortunate should bear the burden jointly was, after all, not a very remote one. But death was equally the lot of all. Custom and tradition were always hard to break down, and this was a sphere in relation to which men's ideas were particularly stereotyped. Fatalism, which is antagonistic to any form of insurance, would be more than ordinarily antagonistic here.

Moreover, the root idea of life assurance is by

no means an obvious one, the idea of combining to equalise the economic disturbances consequent upon —not the fact of death, but the uncertainty of the moment at which death is going to occur in a given case. But for this uncertainty there would have ceased to be any necessity for life assurance as soon as the introduction of a money system made it easily possible to store up wealth. For if there was some clearly defined point at which life always ceased, personal saving would meet every need. It was just the fact, however, that there is no telling whether time will be afforded to the individual to lay by sufficient to provide for those dependent on him, that made the problem such a difficult one to solve. Further, of course, the circumstance that the widow and orphan, since the passing of the family bond and the weakening of the gild corporate feeling, have to some extent been the care of Church or State, or at any rate have always been able to command more sympathy and support than the ruined trader mourning for his sunken ships, can only have assisted in hindering the working out of a remedy for them, even had there not been the accompanying factor, hinted at above, that life assurance was the problem of the average man, whereas marine insurance was a concern for the trained intellect of the man of affairs. Finally, even had the need for the former been realised earlier, there was wanting, until recent times, a scientific basis for it. The modern system depends wholly upon scientific accuracy and knowledge, and it is rather fatuous to assert that had there been a real demand for the one, the other would not have been found lacking. An argument as to which produced the other would probably lead us nowhere.

Incidentally, it may be worthy of remark that for many years there was little or no opportunity

for such a rapid growth of businesses as to lead to the employment of borrowed capital, but from early times in its history [1] insurance has been more or less intimately connected with loans. A creditor is naturally anxious to see to it that the debtor's goods, and even more his life, are insured, for they are often the sole security for the repayment of his debt. Hence, we see here also an interaction of influences.

It is interesting to notice the changes which have taken place in more recent times in the conception of insurance, changes which reflect different stages of economic thought. During the period which was under the sway of the Mercantile System, with its ideal of an all-embracing state guardianship, it is not a matter for surprise to find projects for state insurance being brought forward; there were suggestions for both fire and life assurance by the State. It is true, the point of view put forward was not so much that of the benefits which would accrue to the insured, as of those which the State itself would reap thereby. If certain persons were brought to poverty through the loss of their goods by fire, or the loss of the family wage-earner by death, the State suffered by their diminished capacity for paying taxes, even if the entire burden of their support did not fall upon it. Insurance was desirable because by its influence in the direction of individual prosperity it would indirectly assist the Treasury—and directly too, it was hoped. Further, life assurance, in so far as it tended, by the support which it afforded to families, to encourage marriage and the increase of population, would be an influence in the right direction.

With the decay of Mercantilism the conception changed. The reaction against State supervision—the principle *laissez-faire, laissez-aller*—put an

[1] See, *e.g.*, *Le Guidon*, p. 64.

end to State schemes of insurance for the time.[1] In this new age of individualism it was every man for himself—such was a natural corollary of the ideal of individual freedom. But man by himself is helpless in many things, there must be combinings here and combinings there, and one form of them began to manifest itself in the private insurance undertakings. And it was now no longer the benefit to the State, but the benefit to the insured which was regarded as the important matter.

Finally, in an age of Capitalism, the undertaker, or insurer, is once more to the fore. But in so far as the capitalistic age is under the influence of social projects, another line of development makes itself apparent, the outcome of a growing desire to guard the interests of a particular class, that class which is most susceptible to those economic disturbances which it is the object of insurance to neutralise, and which is least able of itself to take efficient steps. Thus at the present moment we see on the one hand the interests of the insurer, on the other those of the insured, represented and supported.

The subject-matter of the pages which follow has been divided, for the sake of convenience, into two parts. The first contains an historical sketch of the Gilds, preceded by a consideration of some aspects of the Roman Collegia; the second deals briefly with various other phenomena which have, or have had, their influence in the development of the life assurance idea.

[1] In some countries "the growth of the system of *laissez-faire* has been arrested, or a revival of Mercantilism has taken place, from various causes, such as the creation of the German Empire, and increased military expenditure."—Article "Mercantile System" in the *Dictionary of Political Economy*.

PART I

THE GILD-SYSTEM

CHAPTER II

SOME ASPECTS OF THE ROMAN COLLEGIA

IT is not difficult to account for the existence of the Roman Collegia. The same sense of the need for union which to-day joins men together by artificial bonds, operating in the sphere of social wants, called these societies into being in the early days in Rome. Organised for the accomplishment of divergent mutual purposes, they had yet a common distinguishing mark in the religious element which pervaded all of them to a greater or lesser degree, particularly during the Republic, whether they were associations of priests, of artisans, or of groups of neighbours.[1] Each college had its patron god to whose honour the society was dedicated, and to whom sacrifices were offered and feasts held. This feature is still observable under the Empire, but now the sphere of the Collegia has broadened, and whilst they do not lose their religious colouring, the purely devotional element is weakened[2] and new aims begin to be served. Prominent among these, and the one which calls for our special consideration here, is that of providing a fitting burial for the members.[3]

[1] Below, *Collegia*, p. 630; Kornemann, *Collegium*, pp. 385, 401; Schiller and Voigt, *Die Römischen Staatsaltertümer*, p. 302.

[2] Below, ibid., p. 630.

[3] Or cremation, as the case might be: see Merkel, *Collegia*, p. 849.

It is well to bear in mind that this was no abandonment of the religious standpoint, since in these days the superstition prevailed that only those for whom the last rites had been performed in strict accordance with the rules could hope for repose and happiness after death,[1] and it is probable therefore that even the earliest of the colleges included this object among their other religious activities.[2] But the Empire introduces to our notice a new class of Collegia, the Collegia Tenuiorum,[3] as their name indicates, associations of people of the lower classes, including freedmen and even slaves,[4] in which the achievement of this particular end had become the all-important consideration.

Assuming that the fulfilment of these rites was one of the cares of the earlier societies, it is easy to understand the development of the Collegia Tenuiorum. What had formerly been simply incidental to their religious nature little by little assumed the prior place in the eyes of the members, till in the end the devotional idea sank into the background, and the monthly payments, which had before served to meet the cost of the sacrifices and oblations to the patron god and only incidentally of burials, came to be regarded as a payment in advance for the latter object expressly.[5] It is probable that the gifts which were received from

[1] Boissier, *La religion romaine*, ii. p. 303; Kornemann, *Collegium*, p. 385. Coote, *Romans of Britain*, p. 383, speaks of "twin beliefs engrained in the Aryan mind—the efficacy of decent burial in procuring repose to the soul, and the power of animal sacrifice, as well in comforting the 'manes' as in securing to his relatives an immunity against his malignant attacks." See also Ramsay, *Roman Antiquities*, p. 481.

[2] Waltzing, *Etude Historique*, i. p. 263.

[3] Marquardt, *Römische Staatsverwaltung*, iii. p. 140.

[4] Waltzing, ibid., p. 145.

[5] Marquardt, ibid., p. 142; Waltzing, ibid., p. 263.

time to time from rich patrons were almost exclusively devoted to another end, namely that of founding periodical repasts to the memory of the donors.[1]

Apart from the religious element running through all classes of colleges irrespective of their main object, there are noticeable other common features —those which concerned the social and domestic life of those who went to compose them. In them all is to be found that endeavour to foster friendly intercourse which characterised the mediæval gilds, and also to promote material enjoyments and relaxations. Their aim was, in fact, to encourage what may be termed a "family" relationship among the members.[2]

It is interesting at this point to notice the relationship in which the Collegia stood to the State.

As far as may be gathered, it would appear that an unfettered right of association prevailed in the days of the Republic,[3] and it is under the Emperors that we first discover restrictive measures. Cæsar, and afterwards Augustus, suppressed those colleges which they regarded as dangerous, and it was laid down that new associations should only be formed by special permission, and such permission was not given in any haphazard manner.[4] What, however, might at first sight appear to be an attack upon the principle of free association was, as a matter of fact, part of a certain clear-sighted policy. The Emperors depended for their support upon the army and the common people, whilst they feared

[1] Boissier, *La religion romaine*, ii. p. 333.

[2] Kornemann, *Collegium*, pp. 385, 401, 402; Schiller and Voigt, *Die römischen Staatsaltertümer*, p. 302.

[3] Below, *Collegia*, p. 631; Boissier, ibid., p. 279.

[4] Boissier, ibid., p. 279; Below, ibid., p. 630. But there were many illicit societies despite threats of severe penalties: Boissier, ibid., pp. 281, 315.

danger from the classes of the nobility,[1] and it was this distrust which led them to deprive the upper and middle classes of the right to combine.[2] In dealing with the lower class, their attitude was altogether different. They not only tolerated the Collegia Tenuiorum, which, as we have seen, drew their members from this class, but they went out of their way to encourage them, removing them from the category of forbidden institutions, and authorising them *en bloc* by a special decree of the Senate.[3]

Apart, however, from the political aspect of the matter, it is well to bear in mind that the Emperors demanded from the Collegia that they should possess some definite sphere of utility,[4] and such a sphere of utility, from the point of view of current beliefs, was to be found, in the case of the Collegia Tenuiorm, in the provision of a respectable burial for that class of the population who were least able to make such provision individually.

It must not be assumed, however, that even associations of this nature were in possession of complete liberty. Their object was clearly defined,[5] and except for religious purposes[6] they

[1] Boissier, *La religion romaine*, ii. pp. 314, 315; Waltzing, *Etude Historique*, i. p. 149.

[2] Waltzing, ibid., p. 149.

[3] It probably dates from the time of the first Emperors: Waltzing, ibid., p. 148; Loening, *Geschichte des deutschen Kirchenrechts*, i. p. 204. Its scope was extended to Italy and the provinces by Septimius Severus: Boissier, ibid., p. 314; Loening, ibid., p. 204.

[4] Waltzing, ibid., p. 149. The later stringent measures demonstrating this so clearly, as those, for example, which imposed on the Colleges of Artisans compulsory service to the State, may be noticed in passing: see Below, *Collegia*, p. 631; Liebenam, *Zur Geschichte und Organisation des römischen Vereinswesens*, pp. 49, 50.

[5] Waltzing, ibid., pp. 261, 303; Boissier, *Etude sur quelques collèges funéraires*, p. 89.

[6] Boissier, *La religion romaine*, ii. p. 316. Boissier naïvely remarks: "Pretexts did not fail."

might only come together once a month, for the purpose of paying the contribution necessary to meet the expenses of burials.[1]

Colleges providing for burials[2] may be divided into two classes, namely those which simply paid a certain sum on the death of the member to the heir, whose duty it was to attend to the matter, and those on the other hand which were in possession of a common burial-place or a common monument (columbarium)[3] corresponding to the two forms of disposal of the dead, interment and cremation.

Probably the true Collegium Tenuiorum was the society without either common monument or burial-place,[4] and it is at one of these—which was doubtless typical—the Collegium cultorum Dianæ et Antinoi at Lanuvium[5] that we shall now look more closely. We possess an inscription of the year 136 A.D., which furnishes us with very full and interesting information concerning it.[6] Its composition was similar to that of the other Collegia Tenuiorum.[7] New members must pay an entrance fee of 100 sestertii[8] and provide an amphora of

[1] Boissier, *La religion romaine*, ii. p. 313.

[2] Burial money was also paid by many Colleges of Artisans: Schiess, *Die Romischen Collegia Funeraticia*, p. 35; Kornemann, *Collegium*, p. 402.

[3] Schiess, ibid., p. 87; Merkel, *Collegia*, p. 849; Boissier, *Etude sur quelques collèges funéraires*, p. 87. As a rule these burial-places or monuments were the gift of some rich patron: Müller, *Ansätze zum Versicherungswesen in der römischen Kaiserzeit*, p. 210.

[4] Merkel, ibid., p. 849.

[5] An ancient town not far from Rome on the Via Appia. The college was founded 133 A.D.

[6] *Corpus Inscriptionum Latinarum*, xiv. 2112.

[7] Boissier, *La religion romaine*, ii. p. 309, note 1, mentions an ever poorer college, in which the funeraticium was only 200 sestertii.

[8] About 14s. 7d., reckoning a sestertius at $1\frac{3}{4}$d.

"good wine," and thereafter contribute to the funds 5 asses [1] monthly.[2] The capital thus formed constituted the provision for the burial of members, on the death of one of whom a sum of 300 sestertii (*funeraticium*) was paid out to meet the expenses. Of this amount 50 sestertii was distributed among the funeral train.

It is not difficult to find certain points of similarity between associations such as this and our modern life assurance companies. The Collegium cultorum Dianæ et Antinoi was clearly a mutual society for a common object, for the removal of what was in those days regarded as a common danger, namely, that of death intervening without the presence of a sufficient sum of money to provide for a fitting burial,[3] and the means of attaining this end were a present payment to secure a future benefit.[4] There is an analogy with present-day methods in the averaging of good risks with bad, of the contributions, that is to say, of those who paid "too much" with the contributions of those who paid "too little," [5] and the analogy is further observable even in matters of routine. We see it for example in the care that was exercised on the occasion of the paying out of the benefit in order to guard

[1] About $2\frac{3}{16}$d.: 4 asses = 1 sestertius.

[2] Those who had paid for fifty years were exempted from further contributions.

[3] It is of interest to note that no one was allowed to belong to more than one such college at once. According to Mommsen this was a sort of "Luxusverbot": Merkel, *Collegia*, p. 850. For a different opinion see Gebauer, *Sogenannte Lebensversicherung*, p. 38, note 2.

[4] The collegia seem to have inspired the same confidence which is observable in connection with the gilds of the Middle Ages.

[5] All paid, that is to say, the same monthly contribution, whether they lived for many or few years after entering the society. Apparently there was no distinction made between older and younger entrants.

against fraud, the only person entitled to receive the money being the testamentary heir; where the member died intestate the college itself undertook the charge of the burial. There were regulations exempting the society from liability in cases where payment of the monthly subscription had been neglected for a certain length of time,[1] and provisions relating to suicides.[2]

[1] At the commencement of the statutes of the D. et A. we find the following: "May our enterprise prove to the good and well-being of the Emperor and his family, of ourselves and our families, and of the college we are founding! And may we apply a salutary activity to bring together the sums needful for the provision of a fitting burial of our dead. The means thereto are that the payments be made regularly, so that our association may have a long life."—Boissier, *La religion romaine*, ii. p. 311. That the warning contained in the last clause was no empty one is evidenced by an extremely interesting inscription discovered in one of the wildest parts of ancient Dacia, which runs: "Copy of a document which was posted up at Alburnus near the office of Resculius. where was written as follows: 'Artemidorus, slave of Apollonius, president of the college of Jupiter Cernenius, and with him Valerius, slave of Nicon, and Offas, slave of Menofilus, questors of the same college, hereby make known to all that, of the 54 persons who formed the said college there only remain 17 at Alburnus; that Julius, slave of Julius, who was president with Artemidorus, has not set foot in Alburnus or made an appearance in the college since the day of his election; that Artemidorus has rendered his accounts to the members present, that he has proved to them that he has restored all the money which he had from them or that he has expended it for the burials of members, that he has received back the security which had been demanded of him; that at the present time there is no more money in the chest to pay funeral expenses and the society possesses no more burial-places; that finally for a long time no one has wished to meet on the days fixed by the laws of the college, or to pay the dues. The foregoing is hereby made known to all so that, if one of the members comes to die, he shall not imagine that the college still exists and that he has the right to make any claim(!). Made at Alburnus. . . . 167 A.D.'"—Boissier, ibid., pp. 311, 312; *Corpus Inscriptionum Latinarum*, iii. p. 925.

[2] A suicide forfeited by his act all claims on the Society.

Leaving now our Collegia Tenuiorum, let us pass on to certain institutions of great interest which are to be found in connection with the Roman Army.

The State provided for the future of the legionary. In the first place those who had completed their period of service were entitled to a pension,[1] but naturally there were many who, owing to wounds or sickness, were incapacitated from service before this point was reached. To remedy this defect there were two separate arrangements existing side by side, both subject to a certain amount of supervision from the side of the State.

The first of these institutions[2] had to do with the donativa—the largess which the soldiers received from time to time. These amounted to no trifling sum; for not only were the Emperors in the habit of distributing to the troops of their bounty on accession to power and afterwards when it was a question of allaying discontent, but on many another occasion as well, as for example a notable military success or an event of importance in the Imperial Family.

In order to compel saving, the recipients were bound to deposit with the signiferi[3] the half of what fell to them on each occasion, which sum was put to their credit and repaid, it would seem, only at the end of their service, save perhaps in exceptional cases.

There was here no question of "averaging": each man received what he had paid in, apparently without the benefit of interest. When a soldier died on service, this capital passed to his father, unless indeed there were others entitled to it by will.[4]

[1] Cagnat, *L'Armée Romaine d'Afrique*, p. 457.
[2] Cagnat, ibid., pp. 458, 459.
[3] Ensigns.
[4] Cagnat, ibid., p. 460.

The second of these institutions[1] served to procure a fitting burial to soldiers dying in the army, but unfortunately the information remaining to us is of a scanty nature. The resources consisted in small contributions which were demanded from all legionaries; it is not known, however, whether these contributions were according to a fixed scale, which is probable, or whether the amount was left to the generosity of each; whether there was one payment or a number; whether it was levied on the pay or the donativa; whether only the common soldiers were allowed to participate or the petty officers also. That the latter should be the case is unlikely. Voluntary association was forbidden to the common soldier for obvious reasons of discipline[2] but the officers were in a different position, and from the time of Septimius Severus at least,[3] were permitted to form themselves into colleges, and thus to make the needful provision themselves.

The town of Lambaesis,[4] in Algeria, was for three centuries the home of a Roman Legion (Legio III. Augusta), which was charged with the defence of Numidia, and it is from the inscriptions which have survived concerning the military college there that we receive our fullest information bearing on such associations. It is doubtless a type of many others.[5]

[1] Cagnat, *L'Armée Romaine d'Afrique*, pp. 460, 461.

[2] Waltzing, *Etude Historique*, i. p. 308. On leaving the army they were free to join the Colleges of Veterans: Waltzing, ibid., p. 309.

[3] The birth of these Colleges seems to have been the result of his tolerance and military reforms. At Lambaesis he even allowed them to construct meeting-places in the camp itself: Waltzing, ibid., p. 309; Cagnat, ibid., pp. 463, 466, 467.

[4] Lambessa or Lambèse.

[5] Cagnat, ibid., pp. 463–6, gives a list of the Colleges of the armies of Africa, Britain, Spain, the Danube, Rome

The college of the Cornicines[1] at Lambaesis was founded in the year 203 A.D., and a charge of 750 denari[2] was imposed for the right of entry. Though it is impossible to be certain, yet the probability is that only a portion of this amount was paid immediately, and that the remainder was spread over a certain period in the form of monthly contributions.[3] The benefits were as follows:[4]—

1. A member promoted to a superior rank in the Third Legion received 500 denarii.

2. A member passing into another Legion, and who was in consequence obliged to cross the sea, also received 500 denarii with the addition, however, of 200 denarii for travelling expenses if he belonged to the infantry, and of 500 denarii if he belonged to the cavalry.[5]

3. Veterans received 500 denarii; but those who were degraded or dismissed from the service forfeited one-half.

4. When a member died on service the sum of

and Italy, and of the fleet, but it is impossible to say, for want of definite evidence, that they were on the same lines as that at Lambaesis: Waltzing, *Etude Historique*, i. p. 312.

[1] Horn-blowers.

[2] About £21 17s. 6d.: 4 sestertii = 1 denarius; see note 8, p. 19, and note 1, p. 20.

[3] Waltzing, ibid., p. 309; Cagnat, *L'Armée Romaine d'Afrique*, p. 470.

[4] Waltzing, ibid., p. 310.

[5] This part of the inscription is not very clear. Cagnat, ibid., p. 472, note 1, differs from Waltzing and inclines to the view that 200 denarii was the amount paid to the cavalry soldier also. He argues that if the horse was the property of the soldier, the most simple procedure would have been for him to sell it on his departure; whereas if it belonged to the State the latter would either have borne the cost of transport or have remounted him on his entry into the new legion.

500 denarii was paid out to his heir or some other authorised person, who was bound by law to undertake the obsequies.

Either occupying a different rank in the same college or combined in a college of their own were the Optiones,[1] as to whom, however, our information is fragmentary. The amount of the entrance money is not known, but to judge from the benefits it must have been considerable. We know that the veterans received the sum of 6,000 sestertii, and we have in addition record of an interesting statute to the effect that the optio who crossed the sea to work for his advancement in the capital[2] was entitled to 8,000 sestertii.[3]

It is a disputed question in how far the Roman Colleges were societies aiming at mutual assistance among their members.

It is undoubted that, organised as they were, they had only a step to take to become so.[4] But was the step taken? Mommsen, whose services in this field of research are well known, supposed that the Collegia Tenuiorum, in addition to the care of burials, devoted themselves to the accomplishment of other aims of reciprocal support,[5] although the degree of the Senate which authorised them distinctly specified the former object. That the activity of the Roman Colleges extended beyond the mere provision of burial was held by later investigators, who either followed Mommsen in his supposition or differed from him in this, that they saw in the Collegia Funeraticia only one class

[1] Lieutenants.

[2] "One went, then as now, to the capital of the Empire to solicit favours. It was a grave and costly enterprise."—Boissier, *Etude sur quelques collèges funéraires*, p. 92.

[3] Waltzing, *Etude Historique*, i. p. 310.

[4] Boissier, *La religion romaine*, ii. p. 333.

[5] Kornemann, *Collegium*, p. 387.

of the Collegia Tenuiorum, whilst there were, according to their view, other classes of Collegia Tenuiorum devoted to other specific ends.[1] Loenig[2] expresses the opinion that the Collegia Tenuiorum were "associations of the lower classes for mutual support of all kinds," and the Collegia Funeraticia but the one class of Collegia Tenuiorum which was by its nature most frequent. Liebenam,[3] whilst admitting that the desire for a respectable burial may have been responsible for the origin of these societies, and the satisfaction of this desire have remained their main object, regards them as "societies for mutual support in accident and sickness, combinations for self-help in general." He designates the military College at Lambaesis "an association for mutual support in every respect, a sort of accident and life insurance."[4]

Gebauer[5] develops the same idea, carrying it even further. Not only were the colleges, in his opinion, institutions for the assistance of members in adversity—sickness, accident, and the like—but he strengthens the analogy with modern conditions by regarding the benefit paid as being not only burial money but an insurance sum which was also intended for the amelioration of

[1] Probably, however, all the Collegia Tenuiorum were Collegia Funeraticia: Mommsen, *De Collegiis et Sodaliciis Romanorum*, 1843, pp. 98, sqq., and *Zeitschrift für geschichtliche Rechtswissenschaft*, xv. pp. 359, sqq., per Loening, *Geschichte des deutschen Kirchenrechts*, i. pp. 204, 205. See Waltzing, *Etude Historique*, i. p. 145, in confirmation of this view.

[2] *Geschichte des deutschen Kirchenrechts*, i. p. 205.

[3] *Zur Geschichte und Organisation des römischen Vereinswesens*, p. 40. In his opinion as well as that of Schiller, *Geschichte der römischen Kaiserzeit*, I. i. p. 423, this applies not only to the Collegia Tenuiorum, but was the case with the Colleges of Artisans also: Liebenam, ibid., pp. 257, 258.

[4] Liebenam, ibid., p. 307.

[5] *Sogenannte Lebensversicherung*, pp. 38, 39.

the condition of the widow and family of the deceased.[1]

This view he extends to the military colleges.[2] In the 500 denarii paid by the College of the Cornicines on the death of a member he sees an amount for the benefit of the bereaved—"an analogy with our Life Insurance"—though, as he remarks, the amount was a fixed one, and not subject to the will of the individual member.

Not only so, but he finds confirmation for his theory in the fact that the amount was not in every instance a payment at death, but was handed out to the veteran on his quitting the army on the expiry of his term of service. He regards the payment in such a case as a provision for old age, analogous to the procedure under a modern "endowment" policy where the insurance matures on the attainment, by the assured person, of a certain age, or on his death, should it occur prior to that age being reached.[3]

The theories, however, which attribute to the Roman colleges, in general, arrangements for comprehensive mutual assistance cannot be substantiated,[4] and, failing definite evidence, it is necessary to reject them. There is no ground for making conjectures relative to other classes of colleges in the fact that the military colleges paid

[1] He recognises that such was not the case with the Collegium D. et A.: *Sogenannte Lebensversicherung*, p. 38. According to his view the Colleges of Artisans also made payments for the benefit of the family: ibid., p. 39, note 3.

[2] Ibid., pp. 42–4; similarly Merkel, *Collegia*, p. 851.

[3] Apart from anything else, the smallness of the amount tells against the theory, and Gebauer's explanation, ibid., p. 43, that the College, on account of its weak technical foundations, had to proceed very carefully, hardly explains away this preliminary difficulty.

[4] Waltzing, *Etude Historique*, i. pp. 145, 301–3; Merkel, ibid., p. 850; Boissier, *La religion romaine*, ii. p. 333; Kornemann, *Collegium*, pp. 387, 402.

certain benefits other than those at death. Their object was, above all, to overcome uncertainty as to the fulfilment of the last rites, just as that was the object of the Collegia Tenuiorum.[1]

A member of the military profession might anticipate finding himself in a position—once or twice in his career, perhaps—where promotion, or the prospect of it, would make it well-nigh essential for him to be in possession of a certain sum of ready capital, and it was to meet such special contingencies that the provisions in question were framed. The exigencies of the career of arms, therefore,[2] and not the spirit of mutual support, accounts for this special feature. Nor can capital be made of the fact that "death . . . was not the condition for the payment of the sum, but only the extreme limit for such payment."[3] Members of the Collegia Tenuiorum doubtless remained members, as a rule. The very nature of military service, on the other hand, would render it the rule rather than the exception that a member should quit his college after a greater or lesser number of years, whether because of advancement, because of removal to another legion, or because his term of service had expired. Clearly, if the military colleges were to be of any practical use at all, provision must be made for this contingency, and therefore it came about that such a member received the sum to which death would have entitled his heir. With this he could then enter another college, either in his new legion, if it were simply a question of change, or in a college of veterans in the event of his term of service being at an end.[4]

[1] Waltzing, *Etude Historique*, i. p. 310.
[2] Kornemann, *Collegium*, p. 402; Waltzing, ibid., p. 312.
[3] Gebauer, *Sogenannte Lebensversicherung*, p. 43.
[4] Cagnat, *L'Armée Romaine d'Afrique*, p. 475; Waltzing, ibid., pp. 310, 311.

No such special considerations entered into the life of the ordinary civilian. True, there was the possibility of sickness, accident, or other incapacitating cause ever present, but as there is no evidence of provision against these evils in the military colleges themselves,[1] the latter cannot be regarded as testifying to the probability of that class of mutual support existing in the civil colleges.[2]

The military colleges, like the Collegia Tenuiorum, were therefore above all things burial societies. The difference between them and the institution for the legionaries which we have noticed—indemnification against certain expenses to which an officer could be exposed, but not a common soldier—is of quite a secondary nature.[3]

[1] Waltzing, *Etude Historique*, i. p. 313; and it is not probable that the members of the military colleges had part in the compulsory saving scheme already noticed above.

[2] Kornemann, *Collegium*, p. 387.

[3] Cagnat, *L'Armée Romaine d'Afrique*, p. 477.

CHAPTER III

GILD BEGINNINGS IN GENERAL

THAT gild organisation has been on a very extensive scale is easily seen;[1] how the system first came into being is very difficult to determine. Attempts have been made to demonstrate a continuity of development from Roman days,[2] and whilst it cannot be denied that "the simple idea of a confraternity united for the discharge of common or mutual good offices, supported by contributions of money from each member and celebrating its meetings by a periodical festival, may find parallels in any civilised nation at any age of the world,"[3] it is not thereby said that there is any direct line of development down the ages, and, in fact, no proof can be adduced that this is the case.[4]

[1] Many of even the most insignificant of our villages contain vestiges of gildhalls: Eden, *State of the Poor*, i. p. 598.

[2] Coote, *Romans of Britain*, pp. 410–13, for example, relying on certain coincidences, claims an identity between the gilds of England and the collegia of Rome and Roman Britain. The opposite opinion is expressed by Smith, *English Gilds*, p. xvi, note 1; Gross, *Gild Merchant*, i. p. 176. It is of interest to note here that the claim is also made that there is no historical gap between gilds and modern friendly societies—*e.g.*, by Ludlow, *Gilds and Friendly Societies*, p. 738. See also Baernreither, *Die Englischen Arbeiterverbände*, i. pp. 144, 146; Eden, ibid., p. 590; Howell, *Conflicts of Capital and Labor*, pp. 15, 16.

[3] Stubbs, *Constitutional History*, i. p. 448.

[4] Cf. Hegel, *Städte und Gilden*, i. pp. 10, 11.

In whatsoever manner the more modern gild system may have arisen, good and satisfying reasons for it are not lacking. One of the most obvious is, that in the days of weak or non-existent central authority, and consequent ill-administration of justice and lack of poor-relief, an amalgamation of private interests was not only natural, but necessary.[1] A parallel force is also to be found in the importance which, particularly among Germanic races, attached to the ideal of the family. With the progress of time the family tie began to loosen and to fail in the exercise of its function. The mark communities,[2] too, began to decay before the incoming *régime* of land proprietorship and overlords,[3] for just as, in a later day, the accumulation of capital in the hands of a few altered the whole face of industry and was largely responsible for the disappearance of the craft gilds,[4] so here a similar accumulation of land was to a large extent accountable for the breaking up of the "mark" principle.[5] Association was then recognised as a means for supplying a new bond for the purposes of mutual assistance and

[1] Gross, *Gild Merchant*, i. p. 241. "In an unsettled, barbarous condition of society private association has to provide for many needs which are gradually taken up by the State." —Ludlow, *Gilds and Friendly Societies*, p. 556. See also Wilda, *Gildenwesen*, p. 42; Ehrenberg, *Gilden*, p. 727. There is a nice touch of irony in the fact that the very forces of disorder which helped to call the gild system into being were themselves, on occasion, similarly organised—*e.g.*, the robber gilds on the Rhine, such as the Böse Gesellschaft of 1362 and the Räubergesellschaft of 1381 mentioned by Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 446.

[2] See Gierke, ibid., pp. 60 sqq.; Kemble, *Saxons in England*, pp. 53 sqq.

[3] "Die Grundherrschaft bestimmte vom 8. bis 11. Jahrhundert den Charakter der deutschen Wirtschaft."—Lamprecht, *Deutsche Geschichte*, iii. p. 24.

[4] See pp. 120, 121, below.

[5] Cf. Lamprecht, ibid., pp. 23–6.

support, in a day when it was difficult for the individual to stand alone.[1]

On the one hand, therefore, as long as the bond of kinship remains potent the rise of a gild system is impossible, for the very essence of such a system consists in this, that it is the substitution for a natural tie of an artificial one consciously entered into, when the former becomes inadequate to meet new and wider needs; whilst, on the other hand, it is equally impossible if a State-power can at once arise to satisfy those needs.[2]

These two facts furnish the key, as we shall see hereafter in discussing the Frankish Empire, to much that would otherwise be vague and difficult of interpretation in gild history.

Whatever particular object it might have been created to serve—and, as we shall see, there were various primary objects at various times—every class of gild exhibits the same spirit of brotherhood, going out not merely in that one direction, but embracing as well the other needs of life.[3]

The members of the association themselves and not any specified aim were the first consideration of the gilds—the object was made to subserve the person, not the person the object; to-day the position of things is reversed.[4] They sprang up on all hands, assuming the most varied forms, now tolerated, now encouraged, now banned and downtrodden, but manifesting in the main a remarkable

[1] Cf. Gebauer, *Sogenannte Lebensversicherung*, pp. 47, 48; Ludlow, *Gilds and Friendly Societies*, pp. 555, 556; Schmoller, *Strassburger Tucher- und Weberzunft*, p. 376; Seligman, *Two Chapters on the Mediæval Guilds of England*, p. 17.

[2] Doren, *Untersuchungen zur Geschichte der Kaufmannsgilden des Mittelalters*, pp. 7–16.

[3] Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 227, 228, 359, 450; Smith, *English Gilds*, pp. xix, xx, xxvi, xli.

[4] Gierke, ibid., pp. 388, 450; cf. Lamprecht, *Deutsche Geschichte*, iii. p. 25.

degree of independence and initiative. Inwardly united by that sense of fraternal responsibility alluded to, they manifested towards those outside, except where influenced by religious principles, an attitude which ranged, according to the circumstances of the case, from mere aloofness to actual enmity.[1]

A vast amount of labour and ingenuity has been expended to explain wherein the gild system found its origin, without, it must be owned, any very definite results having been attained. It is not sufficient to seize upon some characteristic of the system, whether it be its periodical feasts or its "family" spirit, and assert that a certain precedent institution manifesting that characteristic is therefore the gild progenitor. Such a procedure merely seems to involve one in a discussion as to which, after all, of the various characteristics is the one really essential to the existence of a "gild." And since, whilst no one would deny that there are many common distinguishing marks, gilds are different things in different ages, and the gilds of one age do not even of necessity develop out of those of another, there are many difficulties involved. Whether such an inquiry, could it be satisfactorily answered, would be of any great value, is a question we need not discuss here. And besides the inward and true cause of their birth "is not to be found in the fact of the pre-existence of types capable of being transformed into gilds, but in the spirit of self-help of the people."[2] "Not behind any other race in the impulse towards universality and the capacity for state-organization, going beyond the most in the love of freedom, the Germanic peoples above all others possess a gift through which they have imparted a special import

[1] Cf. Schmoller, *Strassburger Tucher- und Weberzunft*, p. 377.
[2] Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 226.

to the idea of freedom and a firmer basis to the idea of unity—the gift of association."[1]

But it is not sufficient to stop here. National characteristics are, after all, not something inherent but the product of the experience of a particular people and of the circumstances of its growth. If we want, for example, to understand the causes for the vital differences underlying what on the surface appear to be identical, or at any rate very similar, institutions, namely, the Roman colleges and the early gilds of the Germanic races, it is necessary at the very outset to bear in mind how slowly the idea of a centralised state-power dawned in the case of the latter.

As the kin-bond was being more and more weakened by the great waves of migration initiated by them,[2] there arose, to meet needs with which neither Family nor State was competent to grapple, a new institution, namely, the mark community. It depended, not on kin—though the structure of the family was long retained[3]—but on a common occupation of wood and pasture and on common interests, and as a consequence it could only endure so long as there existed approximate equality among the members. In the Frankish Empire all that was altered by a series of changes which culminated, and at the same time found their chief expression, in a system of proprietorship of land on a large scale,[4] and gilds arose—bodies of men who gave their union the solidity afforded by mutual oath. But precisely on this account they came into

[1] Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 3.

[2] For other causes of its loosening, see Inama-Sternegg, *Deutsche Wirtschaftsgeschichte*, i. p. 104.

[3] Inama-Sternegg, ibid., pp. 100 sqq.

[4] Inama-Sternegg, ibid., pp. 385 sqq.; for this process in its beginnings, ibid., pp. 143 sqq. See also Inama-Sternegg, *Die Ausbildung der grossen Grundherrschaften.*

collision with Charlemagne and his ideals of a great centralised power, and from his reign onward we have a succession of edicts which we shall look at more closely hereafter. The seed had taken root, however, and it was not all the legal measures that were passed which in the end led to the disappearance of the gilds in what appears to have been the land of their birth.

Whilst the confusion which followed the short Carolingian glory prevented the seed from ever coming to full blossom there, in that the anarchy which prevailed robbed the weak of the needful spirit of independence and self-confidence,[1] yet the idea of protection by mutual association was never again lost to the Middle Ages. The gilds entered to carry on the generally accepted ideals when natural ties became too weak to secure their due execution,[2] and this, in passing, we must bear in mind if it should strike us as surprising that artificial associations should embody such a wide range of mutual responsibilities. We must recall what these ideals were and the fact that the spirit of the family relationship survived amongst Germanic races long after the actual bond of kinship had been dissolved. In nothing is this so clearly to be seen as in the conception of the duty of a man towards his neighbour, as we have it reflected in their laws. There were clearly recognised obligations towards those in poverty and those who had lost their goods by fire or otherwise; towards those in distress, *e.g.*, shipwrecked, to assist in the saving of the cargo; towards those in need of temporary assistance of a manual nature, as in the launching of a boat or the drawing of it to land; there were duties of hospitality and of witness-bearing; duties towards the

[1] Doren, *Untersuchungen zur Geschichte der Kaufmannsgilden des Mittelalters.*

[2] Cf. Wilda, *Das Strafrecht der Germanen*, pp. 142, 143.

dead, *e.g.*, to cover a corpse found; and duties, too, in such matters as the enclosing of one's land and the setting of wolf-traps for the common good.[1]

Our contention is, then, that it is useless to look for any common germ of origin for a system comprising so many diverse phases: varying needs, which in various ages the State or individual effort has been incapable of meeting, have called into being associations in which here one characteristic has been pre-eminent, there another, whatever features they might contain in common.[2] As these needs, one by one, disappeared or were otherwise met, the class of gild which had supplied them disappeared also.[3]

None the less will it be of interest to notice the views of those who have sought to trace this common origin,[4] and we cannot begin with any writer more fittingly than Wilda, whose study of the subject of gilds was epoch-making in its particular sphere. Wilda,[5] whilst he sees in the periodical

[1] For a very interesting account, see Wilda, *Das Strafrecht der Germanen*, pp. 140 sqq.; cf. Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 72, 73.

[2] Cf. Gross, *Gild Merchant*, i. p. 176; Hartwig, *Untersuchungen über die ersten Anfänge des Gildenwesens*, p. 163; article "Gilds," *Dictionary of Political Economy*, ii. p. 209.

[3] Wilda, *Gildenwesen*, p. 371. Their disappearance is no cause for regret; they would have been ill-suited to meet modern requirements. See Pike, *History of Crime*, i. pp. 382, 383.

[4] In connection with the question of origin, cf. Hartwig, ibid., p. 163; Eden, *State of the Poor*, i. p. 594; Maine, *Early History of Institutions*, pp. 232, 233; Ehrenberg, *Gilden*, p. 725; Nitzsch, *Ueber die niederdeutschen Genossenschaften*, p. 4; he refers to the question of a connection between Carolingian and later gilds.

[5] Ibid., pp. 31 sqq. Of a similar opinion are Lappenberg, *History of England*, ii. pp. 350, 351; Marquardsen, *Uber Haft und Bürgschaft*, pp. 43, 44; de Vigne, *Recherches historiques*, pp. ix, x; Hegel, *Städte und Gilden*, i. pp. 5, 6; to a large extent also Doren, *Untersuchungen zur Geschichte der*

gatherings of the gilds on certain solemn occasions when there was a common meal, a direct derivation from the sacrificial banquets of the ancient Germanic peoples on holy days, at which weighty questions, both public and private, were discussed, considers that their peculiarly characteristic feature first entered by the instrumentality of Christianity, through the Christian principle of love to one's neighbour; and "out of a union of Christian principles with ancient German manners and customs issued the gilds."[1] Christianity was, to his mind, their most important element.

Kaufmannsgilden des Mittelalters, pp. 15, 16. Smith, *English Gilds*, p. xvi, note 1, cannot accept this view—in fact, he considers the beginnings quite unknown: *Traditions of the old Crown House*, p. 28. Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 226, whilst allowing that in various heathen and Christian institutions of the past there were moments which could, and probably do, connect with the origin of gilds, deems it only an external connection and not the inward and true ground for the birth of gilds. Thorpe, *Diplomatarium Anglicum ævi Saxonici*, p. xvi, considers that gilds may with great probability be traced back to the sacrificial feasts of the heathen. Gross, *Gild Merchant*, i. pp. 175, 176, holds that they cannot. "They doubtless originated spontaneously among Christians for mutual support in things temporal and spiritual. . . ." Cf. article "Gilds," *Dictionary of Political Economy*, ii. p. 209, where it is pointed out that the heathen sacrificial banquets lacked the "corporative solidarity, or permanent association, and the spirit of fraternal co-operation or Christian brotherhood" of the gilds. On the other hand, the "work of the Church was directive rather than creative." Seligman, *Two Chapters on the Mediæval Guilds*, pp. 9–19, disallows the theory of the origin of gilds in the sacrificial banquets, as also in the family. To attempt to discover any one source is idle, he considers. "The frith-guilds originated in the virile spirit of resistance to oppression, the social guilds in the feeling of conviviality and reciprocal aid, the religious guilds in the desire to secure the blessings of a future life; but the idea by which all were penetrated was the partial realisation of the doctrine of universal brotherhood which the early Church so zealously strove to diffuse."—Ibid., p. 19.

[1] Wilda, *Gildenwesen*, p. 32.

Following Wilda a part of the way, Brentano[1] holds that whilst the heathen sacrificial feasts, and particularly the family banquets of the North, contained the germ of the gilds, the family itself, with its care for its members in the multitudinous vicissitudes of life, was the type or pattern in direct imitation of which gilds were formed.[2] "The family appears as the first gild, or at least as an archetype of the gilds.[3] . . . After the German tribes had settled in fixed abodes, the families dwelling in a certain district united themselves into common sacrificial assemblies. . . . When Christianity, together with its religious fraternities, came to the North, the latter amalgamated with the heathen sacrificial societies which they found there, and from this union arose the Religious Gilds of the Middle Ages."[4] When the family was no longer able to meet the ever-increasing demands made on it by its members—especially for protection against force and violence—in a day when the latter could not look to the State for help, artificial unions were formed in imitation of the family to meet the need.

[1] *History and Development of Gilds*, pp. lxv–lxxx.

[2] Wilda, *Gildenwesen*, p. 169, had already drawn attention to the aspect of the family, whilst not giving it the same place in the discussion as Brentano. Green, *History of the English People*, i. p. 209, would appear to favour the idea of derivation from the family. Gross, *Gild Merchant*, i. p. 169, points out that when the old kin-bond or "mægth" was dissolved, it was the occasion but not the cause of the rise, in course of time, of new institutions—the mark, the town, the lord with his dependents, the gild, monastic bodies, knighthood, &c., and above all, the State—in almost any of which we might find striking resemblances to the family; but we do not on that account derive them from the family. Cf. Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 14; Seligman, *Two Chapters on the Mediæval Guilds*, pp. 17, 18.

[3] Brentano, ibid., p. lxxx.

[4] Brentano, ibid., p. lxxxi.

Another theory which we must not pass over is that elaborated by Pappenheim,[1] who traces back the origin of gilds to the ancient northern "foster-brotherhoods" or "sworn-brotherhoods"[2]—artificial bonds of union between two or sometimes more persons. This, it is interesting to notice, is entirely new ground. The writer repudiates the elements both of the sacrificial banquets and of Christianity as determinant factors in the interpretation of gild origin; in the former, he argues,[3] there is, for example, no trace of an intimate and lasting relationship amongst the members, with an obligation arising therefrom for mutual support in case of need; and as to the latter, whilst the anti-Christian idea of the "blood-feud" appears as the very essence of the early frith gilds, the statutes enforcing Christian charity seem to have been tacked on later and do not appear as an essential element.[4]

Not only so, but his theory opposes the idea of derivation from the family, for the foster-brother-

[1] *Die altdänischen Schutzgilden.*

[2] For an interesting account of one of these foster-brotherhoods, see *Origines Islandicæ*, i. p. 319: "Now they walked out to Eyre-knoll-edge, and raised up or cut out of the earth an earth-necklace, so that both ends were fast to the earth, and under it they put a graven spear, such that a man might touch the spear-nail or blade-rivet with his hand. They four —N, M, O, P—were to go under it. And now they let themselves blood, and let their gore run together into the mould that was laid bare under the earth-necklace, and stirred together, the mould and the blood. And then they all fell on their knees and swore an oath, that every one should avenge the other like his own brother, and named all the gods to witness, and . . . grasped each other's hands. . . ." See also Pappenheim, ibid., pp. 21 sqq., 83 sqq.; Münter, *Kirchengeschichte*, i. pp. 181, 182.

[3] Pappenheim, ibid., pp. 1–3.

[4] Pappenheim, ibid., pp. 3 sqq.; cf. Doren, *Untersuchungen zur Geschichte der Kaufmannsgilden des Mittelalters*, pp. 15, 16.

hoods, he says,[1] did not take the place of the kin-bond, but were side by side with it.[2]

It is from the Frankish Empire, as we have seen, that we obtain our first definite record of gild organisation.[3] It is because both temporal and spiritual powers saw in these associations a source of danger[4]—in the former case, possibly not without some cause,[5] to the supreme authority of the State,[6] and in the latter to the continuance of becoming tranquillity and order in the Church—that we are afforded from the various statutes, both secular and

[1] Pappenheim, *Die altdänischen Schutzgilden*, pp. 83, 88.

[2] Brentano had not overlooked these foster-brotherhoods; in fact, he states that they contained the essence of the gild, see *History and Development of Gilds*, pp. lxxi, lxxii. Durst-hoff, *Die Entstehung . . . der oldenburgischen Brandkasse*, p. 4, and Münter, *Kirchengeschichte*, i. pp. 182, 183, incline to Pappenheim's view. Hegel, *Städte und Gilden*, i. pp. 250 sqq., supports Wilda against Pappenheim: as far as is known, he says (p. 6), foster-brotherhoods were unknown to the Franks, among whom we hear of the first gilds. For a similar opinion see art. "Gilds," *Dictionary of Political Economy*, ii. p. 209. Doren, *Untersuchungen zur Geschichte der Kaufmannsgilden des Mittelalters*, pp. 15, 16, whilst agreeing to some extent with Pappenheim, points out that the blood-brotherhood consisted only of a union of two (or at any rate very few) men, and argues that such a union could not of itself operate "organisations-bildend."

[3] The assertion has frequently been made that England was the birthplace of the gilds, *e.g.*, by Brentano, ibid., p. lvii; Wilda also tends to this view, see *Gildenwesen*, p. 244. Against the view, see Gross, *Gild Merchant*, i. pp. 169, 170, 175; Seligman, *Two Chapters on the Mediæval Gilds*, p. 18. Whilst it is true that the earliest detailed statutes which we possess are those of English gilds, that is doubtless only due to their having had the benefit of the indulgence of their kings. Anglo-Saxon gild development probably owes something, too, to the troublous days of the Danish invasions, which were calculated to bind men together in association. See Gross, ibid., p. 175.

[4] Inama-Sternegg, *Deutsche Wirtschaftsgeschichte*, i. pp. 368, 369.

[5] Inama-Sternegg, ibid., pp. 369, 370.

[6] Cf. Carloman's Edict of 884; see below, p. 41.

ecclesiastical, of the eighth and ninth centuries sundry glimpses of them. Starting out from an attack, not upon the objects but the form of the associations, regarding the mutual oaths by which the members were wont to bind themselves as the evil to be combated, we find a blow being struck at the very principle of association, after the lapse of only a few years. Thus the much-quoted capitular of Charlemagne in 779,[1] which already indicates a certain measure of gild development, particularly for the purpose of reciprocal support in the event of loss through fire or shipwreck, only vetoes such gilds as are bound together by mutual oaths; but a quarter of a century later[2] they are absolutely forbidden, whether strengthened by oath or not, on pain of the severest penalties—flogging, mutilation, or even death, according to the seriousness of the offence. The same spirit of opposition is revealed in a statute of the year 821[3] in regard to unions of slaves, which had evidently become common in the maritime parts of Flanders and elsewhere, doubtless with the knowledge, if not the express consent, of their masters, who in future were to be amerced in a certain amount if the rule were broken. Later still comes Carloman's edict of the year 884[4] forbidding the formation of gilds—presumably the people had been joining together in frith gilds—in connection with the depredations of robbers. It is pointed out that appeal in case of injury is to the regularly constituted temporal and spiritual powers, and to them alone.

In conjunction with the foregoing, it is of interest to notice an early statute[5] directed primarily against

[1] C. 16: Pertz, *Monumenta Germaniæ Historica*, *Legum*, i. pp. 37, 38.
[2] Edict of 805, c. 10: ibid., p. 133.
[3] C. 7: Baluze, *Capitularia regum Francorum*, i. pp. 775, 776.
[4] C. 14: Pertz, ibid., p. 553.
[5] 789, c. 26: Boretius, *Capitularia regum Francorum*, p. 64.

the vice of drunkenness, and particularly against certain unions which were formed in honour of St. Stephen, or in honour of the monarch or his children. Whether these can be declared to be gilds or not we do not pretend to say; but when we remember the prominent part eating and drinking had in the gilds, and that even in the Church it was found necessary to issue special warnings against the evil—as, for example, in regard to such occasions as funeral assemblies and the like,[1] it is conceivable that there is some connection between the two.

That some modification took place in the attitude toward the gild principle in later years is proved by the capitularies of Hincmar, Archbishop of Rheims,[2] which reveal the efforts of the Church, not to destroy the gild system but to confine its scope to religious activities, *e.g.*, ceremonies for the dead, almsgiving, and the like. Thus they prohibit frivolity and revelling, and incidentally throw some light on the gilds of those days by the remark that serious disagreements, leading even to murder, had sometimes been the outcome of their meetings. Clergy as well as laymen and women are addressed, and were evidently associated together, and failure to observe these injunctions involved on the part of the priest loss of office, and on the part of a laic exclusion from communion until such time as meet repentance was manifested. The duty of the body in regard to the matter of disputes between its members is enjoined.

[1] Cf. Hincmari capitula presbyteris, c. 14: Migne, *Patrologia Latina*, vol. 125, p. 776 (year 852).

[2] Hincmari capitula presbyteris, c. 16: ibid., pp. 777, 778 (year 852). Cf. c. 15, Concilium Namnetense (from which the above is with slight exceptions copied): Mansi, *Sacrorum Conciliorum nova et amplissima Collectio*, vol. 18, pp. 170, 171.

CHAPTER IV

GILD BEGINNINGS IN ENGLAND

THERE are references in the old English laws which have led some to believe that gilds were prevalent in the country in very early days, and the laws of Ine (A.D. *circa* 688–725) and Alfred (A.D. 871–901) are those commonly relied upon to prove such an assertion.

The main part of the contention rests upon the use of the Anglo-Saxon word "gegildan," the passages in question being as follows:—

"He who slays a thief must declare on oath that he slew him offending; not his gild-brethren." [1] [2]

"If a far-coming man, or a stranger, journey through a wood out of the highway, and neither shout nor blow his horn, he is to be held for a thief, either to be slain or redeemed.

"If a man demand the 'wer' of the slain, he must declare that he slew him for a thief; not the associates [1] of the slain, nor his lord. . . ." [3]

"If a man, kinless of paternal relatives, fight, and slay a man, and then if he have maternal

[1] Anglo-Saxon "gegildan," plural of "gegilda."

[2] Laws of King Ine, c. 16: *Ancient Laws and Institutes of England*, ed. Thorpe, i. pp. 102 sqq. Cf. Schmid, *Gesetze der Angelsachsen*, pp. 28 sqq.

[3] Laws of King Ine, c. 20, 21: *Ancient Laws and Institutes of England*, ibid. Cf. Schmid, ibid.; also cf. (for c. 21) Hegel, *Städte und Gilden*, i. p. 22.

relatives, let them pay a third of the 'wer';[1] his guild-brethren[2] a third part; for a third let him flee. If he have no maternal relatives, let his guild-brethren[2] pay half, for half let him flee."[3]

"If a man kill a man thus circumstanced, if he have no relatives, let half be paid to the king; half to his guild-brethren."[2 4]

Thorpe,[5] whose translation is here quoted, admits that there is much doubt as to the meaning of these laws. He takes "gegildan" to mean not strictly "gild-brethren," *i.e.*, those belonging to the same gild or fraternity, but fellow-thieves. Ine's law[6] then "would be simply this, that if a thief be slain while thieving, the slayer must declare on oath that he slew him in the fact, but then that slayer must not be an associate . . . the object being apparently

[1] "The right of private warfare . . . was one which every Teutonic free man considered inalienable. . . . This right of feud then lies at the root of all Teutonic legislation; and in the Anglo-Saxon law especially it continues to be recognised long after an imperial power has been constituted, and the general conservancy of the peace has been committed to a central authority. . . . The wergyld . . . or life-price, was the basis upon which all peaceful settlement of feud was established. A sum, paid either in kind or in money, where money existed, was placed upon the life of every free man, according to his rank in the state, his birth or his office. A corresponding sum was settled for every wound that could be inflicted upon his person; for nearly every injury that could be done to his civil rights, his honour or his domestic peace. . . ."—Kemble, *Saxons in England*, i. pp. 267, 268, 276, 277. See also Hodgkin, *Political History of England*, i. pp. 226–9.

[2] Anglo-Saxon "gegildan," plural of "gegilda."

[3] Laws of King Alfred, c. 27 : *Ancient Laws and Institutes of England*, ed. Thorpe, i. pp. 44 sqq. Cf. Schmid, *Gesetze der Angelsachsen*, pp. 86, 87.

[4] Laws of King Alfred, c. 28 : *Ancient Laws and Institutes of England*, ibid. Cf. Schmid, ibid.

[5] Ibid., note *a*, p. 113 (and 114); note *a*, p. 116.

[6] *I.e.*, c. 16.

to prevent the recurrence of some villainous practice that had prevailed, such as murdering an associate, for the sake both of plundering him of his booty, and of the benefit attending the denunciation of him as a slain thief."

But it is impossible to determine what was the nature of these bodies and what the relationship of the "gegildan," failing further evidence on the point. Certainly the view that in those early times gilds were so well established as to be mentioned in the laws as a recognised part of the community not requiring any special explanation is hardly to be accepted without more definite evidence.[1] Probably the furthest that we can go is to say that the "gegildan" were comrades having mutual ties of some sort for the payments in common of certain sums which under certain circumstances might be due from one or other of them and which would bear heavily on an individual.[2]

Apart from the above, reference is constantly made to the Judicia civitatis Lundoniæ of the reign of Athelstan (925–40); well known as they are, it

[1] The view is taken, for example, by Smith, *English Gilds*, p. xv; note 1, p. xvi; (see also *Traditions of the Old Crown House* p. 28); and Coote, *Romans of Britain*, p. 410. Stubbs, *Constitutional History*, i. pp. 449, 450, considers that there may possibly be reference to an extended existence of gilds at the time, but recognises that it is impossible to say anything definite. Cf. Lambert, *Two Thousand Years of Gild Life*, pp. 43 sqq.; Hartwig, *Untersuchungen über die ersten Anfänge des Gildenwesens*, p. 136; Hegel, *Städte und Gilden*, i. pp. 20–4, 28.

[2] Schmid, *Gesetze der Angelsachsen*, p. 589; Gross, *Gild Merchant*, i. pp. 169, 177–81. Cf. Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 224, 225; Seligman, *Two Chapters on the Mediæval Guilds*, pp. 12, 13, and notes. Speaking of these laws of Ine and Alfred, Ramsay, *Foundations of England*, i. p. 530, says: "These regulations clearly imply that every law-worthy man had 'gegyldan'; that is to say, that the whole adult male law-worthy population was enrolled in groups, the members of which relatively to one another were called 'gegyldan,' meaning Sharers-in-paying or Fellow-payers."

may be worth while quoting the statutes in full in view of the amount of discussion which centres round them.

Kemble [1] gives the following translation :—

"This is the ordinance which the bishops and the reeves belonging to London have ordained, and with weds confirmed, among our 'frith gegildas,' as well eorlish as ceorlish, in addition to the dooms which were fixed at Greatanlea and at Exeter and at Thunresfeld.

"THIS THEN IS FIRST.

"1. That no thief be spared over xii pence, and no person over xii years, whom we learn according to folkright that he is guilty, and can make no denial; that we slay him, and take all that he has; and first take the 'ceapgild' from the property; and after that let the surplus be divided into ii; one part to the wife, if she be innocent, and were not privy to the crime; and the other into ii; let the king take half, half the fellowship. If it be bócland or bishop's land, then has the landlord the half part in common with the fellowship.

"2. And he who secretly harbours a thief, and is privy to the crime and to the guilt, to him let the like be done.

"3. And he who stands with a thief, and fights with him, let him be slain with the thief.

"4. And he who oft before has been convicted openly of theft, shall go to the ordeal, and is there found guilty; that he be slain, unless the kindred or the lord be willing to release him by his 'wer,' and by the full 'ceapgild,' and also have him in 'borh,' that he henceforth desist from every kind of evil. If after that he again steal, then let his kinsmen give

[1] *Saxons in England*, ii. pp. 521–7.

him up to the reeve to whom it may appertain, in such custody as they before took him out of from the ordeal, and let him be slain in retribution of the theft. But if any one defend him, and will take him, although he was convicted at the ordeal, so that he might not be slain; that he should be liable in his life, unless he should flee to the king, and he should give him his life; all as it was before ordained at Greatanlea, and at Exeter, and at Thunresfeld.

"5. And whoever will avenge a thief, and commits an assault, or makes an attack on the highway; let him be liable in cxx shillings[1] to the king. But if he slay any one in his revenge, let him be liable in his life, and in all that he has, unless the king is willing to be merciful to him.

"SECOND.

"That we have ordained: that each of us should contribute iv pence for our common use within xii months, and pay for the property which should be taken after we had contributed the money; and that all should have the search in common; and that every man should contribute his shilling[2] who had property to the value of xxx pence, except the poor widow who has no 'forwyrhta'[3] nor any land.

"THIRD.

"That we count always ten men together, and the chief[4] should direct the nine in each of those duties which we have all ordained; and [count] afterwards their 'hyndens' together and one

[1] Regarding Anglo-Saxon money, in general, see Hodgkin, *Political History of England*, i. pp. 232–5.

[2] Coote, *Romans of Britain*, p. 398, note 1: "penny."

[3] Coote, ibid., p. 398, note 1: friend who will contribute on her behalf; Schmid, *Gesetze der Angelsachsen*, p. 582, "Vertreter" (glossary).

[4] The "hyndenman."

'hynden-man' who shall admonish the x for our common benefit; and let these xi hold the money of the 'hynden,' and decide what they shall disburse when aught is to pay, and what they shall receive, if money should arise to us, at our common suit; and let them also know that every contribution be forthcoming which we have all ordained for our common benefit, after the rate of xxx pence or one ox; so that all be fulfilled which we have ordained in our ordinances, and which stands in our agreement.

"FOURTH.

"That every man of them who has heard the orders should be aidful to others, as well in tracing as in pursuit, so long as the track is known; and after the track has failed him, that one man be found where there is a large population, as well as from one tithing where a less population is, either to ride or to go (unless there be need of more) thither where most need is, and as they all have ordained.

"FIFTH.

"That no search be abandoned, either to the north of the march or to the south, before every man who has a horse has ridden one riding; and that he who has not a horse work for the lord who rides or goes for him, until he come home; unless right shall have been previously obtained.

"SIXTH.

"1. Respecting our 'ceapgild': a horse at half a pound, if it be so good; and if it be inferior, let it be paid for by the worth of its appearance, and by that which the man values it at who owns it, unless he have evidence that it be as good as he says, and then let [us] have the surplus which we there require.

"2. An ox at a mancus, and a cow at xx, and a swine at x, and a sheep at a shilling.

"3. And we have ordained respecting our 'theowmen'[1] whom men might have; if any one should steal him, that he should be paid for with half a pound; but if we should raise the 'gild,' that it should be increased above that, by the worth of his appearance, and that we should have for ourselves the surplus that we then should require. But if he should have stolen himself away, that he should be led to the stoning, as it was formerly ordained; and that every man who had a man, should contribute either a penny or a halfpenny, according to the number of the fellowship, so that we might be able to raise the worth. But if he should make his escape, that he should be paid for by the worth of his appearance, and we all should make search for him. If we then should be able to come at him, that the same should be done to him that would be done to a Wylisc thief, or that he be hanged.

"4. And let the 'ceapgild' always advance from xxx pence to half a pound, after we make search; further, if we raise the 'ceapgild' to the full 'angilde'; and let the search still continue, as was before ordained, though it be less.

"SEVENTH.

"That we have ordained: let do the deed whoever may that shall avenge the injuries of us all, that we should be all so in one friendship as in one foeship, whichever it then may be; and that he who should kill a thief before other men, that he be xii pence the better for the deed, and for the enterprize, from our common money. And he who should own the property for which we pay, let him not forsake the search, on peril of our 'oferhyrnes,'

[1] *I.e.*, slaves: Coote, *Romans of Britain*, p. 400.

and the notice therewith, until we come to payment; and then also we would reward him for his labour, out of our common money, according to the worth of the journey, lest the giving notice should be neglected.

"EIGHTH.

"1. That we gather to us once in every month, if we can and have leisure, the 'hyndenmen' and those who direct the tithings, as well with 'þytt-fylling,'[1] as else it may concern us, and know what of our agreement has been executed; and let these xii[2] men have their refection together, and feed themselves according as they may deem themselves worthy, and deal the remains of the meat for the love of God.

"2. And if it then should happen that any kin be so strong and so great, within land or without, whether 'xii hynde' or 'twy hynde,' that they refuse us right, and stand up in defence of a thief; that we all of us ride thereto with the reeve within whose 'manung' it may be.

"3. And also send on both sides to the reeves, and desire from them aid of so many men as may seem to us adequate for so great a suit, that there may be the more fear in those culpable men for our assemblage, and that we will ride thereto, and avenge our wrong, and slay the thief, and those who fight and stand with him, unless they be willing to depart from him.

"4. And if any one trace a track from one shire to another, let the men who there are next take to it, and pursue the track till it be made known to the reeve; let him then with his 'manung' take to it, and pursue the track out of his shire, if he can; but

[1] Filling of butts or vats.

[2] Apparently an error in the text for xi, cf. c. 3: Gross, *Gild Merchant*, i. p. 180, note 2.

if he cannot, let him pay the 'angylde' of the property, and let both reeveships have the full suit in common, be it wherever it may, as well as to the north of the march as to the south, always from one shire to another; so that every reeve may assist another, for the common 'frith' of us all, by the king's 'oferhyrnes.'

"5. And also that every one shall help another, as it is ordained and by 'weds' confirmed; and such man as shall neglect this beyond the march, let him be liable in xxx pence, or an ox, if he aught of this neglect which stands in our writings, and we with our 'weds' have confirmed.

"6. And we have also ordained respecting every man who has given his 'wed' in our gildships, if he should die, that each gildbrother shall give a 'gesufel' loaf for his soul, and sing a fifty, or get it sung within xxx days.

"7. And we also command our 'hiremen' that each man shall know when he has his cattle, or when he has not, on his neighbour's witness, and that he point out to us the track, if he cannot find it within three days; for we believe that many heedless men reck not how their cattle go, for over-confidence in the 'frith.'

"8. Then we command that within iii days he make it known to his neighbours, if he will ask for the 'ceapgild'; and let the search nevertheless go on as it was before ordained, for we will not pay for any unguarded property, unless it be stolen. Many men speak fraudulent speech. If he cannot point out to us the track, let him show on oath with iii of his neighbours that it has been stolen within iii days, and after that let him ask for his 'ceapgild.'

"9. And let it not be denied nor concealed, if our lord or any of our reeves should suggest to us any addition to our 'frith-gilds' that we will joyfully accept the same, as it becomes us all, and may

be advantageous to us. But let us trust in God and our kingly lord, if we fulfil all things thus, that the affairs of all folk will be better with respect to theft than they before were. If, however, we slacken in the 'frith' and the 'wed' which we have given, and the king has commanded of us, then may we expect, or well know, that these thieves will prevail yet more than they did before. But let us keep our 'weds' and the 'frith' as is pleasing to our lord; it greatly behoves us that we devise that which he wills; and if he order and instruct us more, we shall be humbly ready.

"NINTH.

"That we have ordained: respecting those thieves whom one cannot immediately discover to be guilty, and one afterwards learns that they are guilty and liable; that the lord or the kinsmen should release him in the same manner as those men are released who are found guilty at the ordeal.

"TENTH.

"That all the 'witan' gave their 'weds' altogether to the archbishop at Thunresfeld, when Ælfeah Stybb and Brihtnoth Odda's son came to meet the 'gemot' by the king's command; that each reeve should take the 'wed' in his own shire: that they would all hold the 'frith' as king Æthelstan and his 'witan' had counselled it, first at Greatanlea, and again at Exeter, and afterwards at Feversham, and a fourth time at Thunresfeld, before the archbishop and all the bishops, and his 'witan' whom the king himself named, who were thereat: that those doofns should be observed which were fixed at this 'gemot,' except those which were there before done away with; which was, Sunday marketing, and that with full and true witness any one might buy out of port.

"ELEVENTH.

"That Æthelstan commands his bishops and his 'ealdormen' and all his reeves over all my realm, that ye so hold the 'frith' as I and my 'witan' have ordained; and if any of you neglect it, and will not obey me, and will not take the 'wed' of his 'hiremen,' and he allow of secret compositions, and will not attend to these regulations as I have commanded, and it stands in our writs; then be the reeve without his 'folgoth,' and without my friendship, and pay me cxx shillings; and each of my thanes who has land, and will not keep the regulations as I have commanded, [let him pay] half that.

"TWELFTH.

"1. That the king now again has ordained to his 'witan' at Witlanburh, and has commanded it to be made known to the archbishop by bishop Theodred, that it seemed to him too cruel that so young a man should be killed, and besides for so little, as he has learned has somewhere been done. He then said, that it seemed to him, and to those who counselled with him, that no younger person should be slain than xv years, except he should make resistance or flee, and would not surrender himself; that then he should be slain, as well for more as for less, whichever it might be. But if he be willing to surrender himself, let him be put into prison, as it was ordained at Greatanlea, and by the same let him be redeemed.

"2. Or if he come not into prison, and they have none, that they take him in 'borh' by his full 'wer,' that he will evermore desist from every kind of evil. If the kindred will not take him out, nor enter into 'borh' for him, then let him swear as the bishop may instruct him, that he will desist from every kind of evil, and stand in servitude by his 'wer.' But if he after that again steal, let him be slain or hanged, as was before done to the elder ones.

"3. And the king has also ordained, that no one should be slain for less property than xii pence worth, unless he will flee or defend himself; and that then no one should hesitate, though it were for less. If we it thus hold, then trust I in God that our 'frith will be better than it has before been."

There are various interpretations of the nature of these statutes.[1] Gierke,[2] for example, seems to have

[1] Stubbs, *Constitutional History*, i. pp. 440, 450, appears to be in some doubt as to the matter. He takes these to be the statutes of a frith gild of the City of London, but at the same time recognises "a distinct attempt on the part of the public authorities to supplement the defective execution of the law by measures for mutual defence." The two hardly seem compatible. Seligman, *Two Chapters on the Mediæval Guilds*, pp. 13–15, takes the statutes to be those of a "fully developed frith guild," authorised by the government officers: not a union of smaller guilds. Hegel, *Städte und Gilden*, i. pp. 24–8, on the other hand, regards the organisation as the union of a number of frith gilds, which cannot itself be called a gild, however. Brentano, too (following Wilda, *Gildenwesen*, p. 245), infers a union of the gilds in and around London, see *Arbeitergilden*, i. pp. 9, 10, 21. Also Walford, *Gilds*, p. 70, and *Insurance Cyclopædia*, v. p. 362; Green, *History of the English People*, i. p. 210. Loftie, *History of London*, i. p. 68, refers to the body as a social-religious gild. Coote, *Romans of Britain*, p. 397, looks on it as a gild like other gilds; as also apparently Ehrenberg, *Gilden*, p. 726. Smith, *English Gilds*, p. xvii, *Traditions of the Old Crown House*, p. 28; and Hartwig, *Untersuchungen über die ersten Anfänge des Gildenwesens*, pp. 139–41, both consider that the reference is to ordinary gilds, as does the writer of the article "Frith-gild" in the *Dictionary of English History*, see p. 483, and Lambert, *Two Thousand Years of Gild Life*, pp. 45–7. Ochenkowski, *England's Wirtschaftliche Entwickelung*, p. 57, disagrees with Brentano's theory and points out that the only gild of which we have any definite information at the time retained its independence to the end, viz. the Cniths' Gild. See also Gross, *Gild Merchant*, i. p. 181. Schmid, *Gesetze der Angelsachsen*, p. xlvi, regards c. 2–8 as actual gild statutes drawn up by the gilds themselves (c. 8, § 9) side by side with regulations which are to be regarded as the law of the land.

[For note 2 see next page.

no doubt that they are the regulations of actual gilds, authorised by the royal "gerefa" and by the bishop, and draws special attention to the fact that they were not merely political, but made provision for periodical festive gatherings[1] and for almsgiving from a religious standpoint,[2] and above all were concerned with morals. "Emerging at a time when the safety alike of person and property was small, when officials participated actively in the suppression rather than the preservation of liberty . . . these bodies must of necessity assume the character of frith gilds."[3] Herein Gierke finds the explanation of the fact that the statutes not merely provided for the indemnification of the one who suffered loss,[4] but made the pursuit of the thief the business of every member.[5]

Gross,[6] on the other hand, takes an opposite view. He looks on the Judicia civitatis Lundoniæ not as the statutes of a gild at all, but as an addition to the general laws of the land, and he regards as

[1] Judicia civitatis Lundoniæ, c. 8, § 1.
[2] Ibid.
[3] *Das deutsche Genossenschaftsrecht*, i. p. 230.
[4] Judicia civitatis Lundoniæ, c. 2.
[5] Ibid., c. 2 and 4.
[6] *Gild Merchant*, i. pp. 178–81.

Continuation of note from preceding page.]

He advances the hypothesis that we have here a collection of gild rules and general laws compiled by the spiritual and temporal authorities, which they imposed upon the frith gilds: see p. xlvii. Ramsay, *Foundations of England*, i. p. 350, regards the organisation as "an arrangement of the population of the city . . . in groups. . . . Some of the provisions point to a voluntary element in the matter of joining a particular 'gildship' (c. 8, § 6). This may have been a privilege open to the citizens of a great city. The regulations as a whole may be regarded as a special development, but only a development of something connected with a general system."

[2] *Das deutsche Genossenschaftsrecht*, i. pp. 230, note 27; 233. Of a similar opinion, Marquardsen, *Ueber Haft und Bürgschaft bei den Angelsachsen*, pp. 42, 43.

confirmation the fact that the bishops and the reeves[1] by whom they were ordained were the king's officers, whereas the essence of the gild system was voluntary association as the outcome of private initiative. These ordinances, he asserts, "provide for a peculiar public police establishment, rather than for a close private association,"[2] and have such an extended range of authority as to belie the idea of gild organisation.[3]

Whilst admitting that some of the clauses have a certain resemblance to later gild regulations, he claims that the resemblance is more apparent than real. Prayers for the dead, for example, were by no means confined to the gilds: in Alfred's reign "half the revenue of the town of Worcester was given away in exchange for a few 'de profundis'";[4] whilst the festive element to which Gierke draws attention reveals, on examination, little of the generous spirit of brotherhood and equality which characterised the gilds, for apparently the common folk were excluded entirely and only the "hyndemen" participated.[5] At the same time he admits the possibility of some existing fraternity having served in some measure as a model or even having been directly utilised by the authorities for reaching their objects, considering it more likely, however, that the term "gegildan" in the Judicia civitatis Lundoniæ has the same meaning as in the laws of Ine and Alfred, that is, "as far as the paucity of the sources will enable us to surmise . . . comrades mutually responsible for 'gelds' or payments, including perhaps fines for breach of law."[6] In

[1] Judicia civitatis Lundoniæ, Preamble; and c. 8, § 9: ". . . the king has commanded of us. . . ."

[2] Gross, *Gild Merchant*, i. p. 179.

[3] Judicia civitatis Lundoniæ, c. 8, § 4.

[4] Gross, ibid., pp. 179, 180.

[5] Judicia civitatis Lundoniæ, c. 8, § 1.

[6] Gross, ibid., pp. 180, 181.

any case, Gross adds, the influence of these ordinances cannot be proved to have been more than transitory.

Wilda[1] sees in them evidence of the union of a number of then existing frith gilds, of which these are the common rules for the better preservation of peace and quietness, the suppression of crime and the stricter enforcement of laws given by the king with this object; an agreement made between the bishops and reeves[2] and the members of the various gilds, which likewise bound others who were not members.

Quite apart, however, from these early statutes of Ine, Alfred, and Athelstan, in which no convincing proof is forthcoming, both the number and the importance of Anglo-Saxon gilds have probably been exaggerated,[3] for other sources which are adduced must also be rejected on the score of insufficiency of evidence.[4] Especially is it customary to find in certain words in the Domesday Book, namely in two passages[5] as to properties at Canterbury, and in another[6] in regard to Dover, references to the existence of gilds at and prior to that day,[7] and Hegel not only holds this to be the case,[8] but even goes so far as to advance the hypothesis that William the Conqueror set himself in opposition to Anglo-Saxon gilds in general and suppressed them where he could.[9] Apart from more proof than he is able to bring forward, nothing seems to be gained by building on possibilities.

[1] *Gildenwesen*, pp. 245–7.
[2] Themselves members of the gilds!
[3] Gross, *Gild Merchant*, i. p. 191.
[4] Gross, ibid., p. 189.
[5] D.B., i. fol. 3a; ibid., i. fol. 2a.
[6] D. B., i. fol. 1a.
[7] *E.g.*, Smith, *English Gilds*, p. xix.
[8] Opposite view: Merewether and Stephens, *History of Boroughs*, i. p. 73; ii. p. 599. Gross, ibid., pp. 59, note 1; 80; 178; 189, note 6.
[9] Hegel, *Städte und Gilden*, i. pp. 56, 57, 64.

None the less true is it that there were gilds in existence in England as early as the ninth century, though as to their exact nature or object we know little. These were the Cnihts' Gilds which were to be found in some of the chief Anglo-Saxon towns, in the ninth, tenth and eleventh centuries.[1] The term "cniht,"[2] it should be explained, in early Anglo-Saxon signified boy or servant, but later usage modified the term to mean a man in the service of some noblemen, not a menial nor even a page, but an armed attendant or military retainer often on very familiar footing with his lord. He was of higher rank than the "ceorl," but of slightly lower than the "thegn," though the distinction in rank in the latter case was not a great one.

The best-known example of these is the "Anglica cnihtene gild" of London,[3] the story of the origin of which, as related by Maitland,[4] is of rather too romantic a nature to be treated very seriously. There is little to indicate what its original functions were. According to Maitland it "had its Beginning in the Reign of King Edgar . . . when thirteen Knights, well beloved of the King and Realm, for Services by them done, requested to have a certain Portion of Land on the East Part of the City, left desolate and forsaken by the Inhabitants, by reason of too much Servitude. The besought the King to have this Land, with the Liberty of a Guild, for ever. The King granted their Request on the following

[1] Gross, *Gild Merchant*, i. pp. 183, 188.

[2] Coote, *Romans of Britain*, p. 405, note 1; Gross, ibid., pp. 183–5; Seligman, *Two Chapters on the Mediæval Guilds*, pp. 15, 16. In the statutes of the Cambridge and Exeter Gilds (see below, pp. 64–7; 139, note) the cnihts appear as some form of subordinate member. It would seem that many cnihts took part in commerce and the management of burghal affairs: Gross, ibid., p. 186.

[3] Gross, ibid., pp. 186–8.

[4] *History of London*, ii. p. 1011.

Conditions, to wit, That each of them should victoriously accomplish three Combats, one above the Ground, one under Ground, and the third in the Water: And after this, at a certain Day, in East Smithfield, the should run with Spears against all Comers: All which was gloriously performed: And the same Day the King named it Knighten Guild. . . ." The same authority further tells us that there was no other charter during the days of Edgar, Ethelred or Canute, but during the reign of Edward the Confessor the descendants of the original founders humbly besought the monarch to confirm their liberties, to which he agreed and granted them a deed thereof. This was confirmed in later days by King William, the son of William the Conqueror, and again by Henry I. Later, the Church of the Holy Trinity within Aldgate being founded by Queen Matilda, the wife of Henry I. in the year 1125,[1] certain burgesses of London, descended from the founders of the gild, assembling in the Chapter-house of the said Church, handed over to the Church and Canons all the land and soke of the gild, "taking upon them the Brotherhood and Participation of the Benefits of that House. . . . And the better to confirm this their Grant, they offered upon the Altar there the Charter of Edward, together with the other Charters which they had thereof. . . . Orgare le Prude (one of their Company) was sent to King Henry, beseeching him to confirm their Gift, which the King gladly granted. . . ."

Turning now to a consideration in some detail of the main classes of gilds, they may fittingly occupy our attention in the following order, viz. Frith Gilds; Merchant Gilds; Craft Gilds; and Social-religious and Religious Gilds.

[1] Not 1115: cf. *History of London*, ii. p. 1012, and Gross, *Gild Merchant*, i. p. 188.

CHAPTER V

THE FRITH GILD

THE frith gilds were sworn brotherhoods concerning themselves mainly with the attempt to fill the gaps caused by defects in matters of law and order due to a weak central authority. At the same time, however, they did not exclude from the list of their activities those more or less common to all gilds, which had to do with brotherly support and assistance in other directions.[1] Not only did frith gilds play a prominent part in the development of the gild system, but it seems probable that there was in the past some connection, varying with place and circumstance, between them and the municipality. Here, however, we begin at once to tread controversial ground, and as the subject is not of vital interest for our present purpose we need not pursue it.[2]

Wilda[3] infers the origin of these frith gilds to be in this country, whence, he considers, they spread to Denmark in the eleventh century during the reign of King Canute. In arriving at this conclusion, and in

[1] Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 242; Ehrenberg, *Gilden*, p. 726; Dursthoff, *Die Entstehung . . . der oldenburgischen Brandkasse*, p. 5.

[2] A. H. Mann in *Social England*, i. p. 306, says: "The so-called 'frith-guids' seem to have been compulsory associations, responsible in their corporate capacity for the good conduct of each member. . . ."

[3] *Gildenwesen*, pp. 62 sqq.

making the assertion that the
in England in the ninth and tenth
less depends to some extent on
the Judicia civitatis Lundoniæ a
actual existing gilds. This point we
discussed, and as far as really reliab
take us we must admit the Frankish Em
the place of their earliest appearance.
important, however, is that in very early tim
find frith gilds in all three countries as well a
the Netherlands.[2] Doubtless, too, they existed
some considerable extent in Germany,[3] as indicated
by the repeated regulations against association by oath, and the fact of these regulations probably explains the lack of ancient gild statutes referring to that country,[4] for as illegal associations they would be very likely to dispense with written ordinances, for the sake of secrecy. Such a body we certainly do find at Cologne, where the members of the ancient free mark community joined together in such a manner in early days, their organisation being known later by the name of the "Richerzeche."[5] We find also a frith gild, the "Hezlagh."[6] in the town of Schleswig, which already in the year 1130 was designated old, an organisation—like the "Amicitia" of Aire—for opposing oppression, and specially highway robbery and piracy, for preventing feuds and preserving peace generally,[7] but the

[1] *Gildenwesen*, p. 43. He quotes the Cambridge Gild as typical of their form.

[2] Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 241, 242. For Swedish gilds see Hegel, *Städte und Gilden*, i. pp. 326–40; for those of Norway, ibid., pp. 408–34.

[3] Wilda, ibid., p. 167.

[4] Gierke, ibid., p. 242.

[5] Gierke, ibid., pp. 242, 256.

[6] Wilda, ibid., pp. 71 sqq.; Dahlmann, *Geschichte von Dännemark*, iii. pp. 7 sqq., 13 sqq.

[7] Wilda, ibid., pp. 152, 153.

[redacted]s probably due to the union [redacted]Schleswig with Denmark and [redacted]e recognition of the body by the

[redacted]tes from an old Danish chronicle a [redacted]ing narrative of this gild :—

[redacted]ng Nicolaus,[3] whose son Magnus had [redacted] Duke Knud Lavard,[4] came to Hetheby[5] [redacted] year 1130,[6] his attendants counselled him not [redacted]nter the town, because the burghers in their [redacted]d . . . had a strict law and did not permit any one to remain unpunished who had injured, much less slain, one of their number. Knud had been during his lifetime Alderman and Protector of the Gild. But the King scorned this warning. 'Shall I,' said he, 'be afraid of a pack of Tanners and Cobblers?' But hardly had he entered the town than the gates were closed, the burghers assembled hastily at the summons of the gild bell . . . and slew the King with all who sought to defend him."

Turning to the Netherlands, we have a further example of this class of association, already alluded to, in the town of Aire, in Artois.[7] In the year 1188 Count Philip of Flanders confirmed to the town its laws and customs as granted by his ancestors, "in order to secure them against the

[1] Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 242. In 1027 Canute obtained from Conrad II. the recognition of Schleswig's independence of the Empire, and it was administered separately by younger princes of the royal house.

[2] *Gildenwesen*, pp. 70, 71. Dahlmann, *Geschichte von Dännemark*, i. pp. 236–8, gives a graphic description of the event.

[3] Niels, King of Denmark.

[4] The ruler of Schleswig.

[5] Town of Schleswig.

[6] This should be 1134. Knud Lavard was not slain by Magnus till 1131 : see Dahlmann, ibid., pp. 227–9.

[7] Wilda, ibid., pp. 147, 148.

attacks of evil men," and [illegible] a reference to the fraternity in [illegible] known as the "Amicitia." It [illegible] association of the burghers, bound [illegible] purpose of mutual protection agains[t] from without, and for the preservati[on] within the town, provisions which in th[e] times can be easily understood. Not on[ly] there arrangements for withstanding forc[e] ensuring by common action, inside the bound[s] law and custom, satisfaction for wrongs done, b[y] the members were to stand in the mutual relationship of brotherhood one towards another in all the vicissitudes of life. Provision is made, for example, for the case of the brother whose goods might be destroyed by fire, or might have to be sacrificed by him in order to deliver himself from captivity.

This body cannot perhaps be regarded entirely as a gild. It seems to have included the whole of the burghers, and even the nobles and clergy appear to have been in its ranks. At the same time it was not identical with the municipal authority; what was the exact relationship is not made clear by the evidence before us.[1]

[1] Wilda, *Gildenwesen*, pp. 148, 150, 151. Gross, *Gild Merchant*, i. p. 191, gives his verdict very strongly against the theory that the English frith gilds were a primary factor in the origin or development of municipalities as far as evidence goes. The difficulty in drawing a clear line between gild and municipality is illustrated by an instance in the case of the town of Bocholt, in Westphalia, where about the year 1336 it was decided that whoever suffered in the military service of the town should be compensated by the community, each bearing in proportion to his property. See Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 329. There was an interesting institution in Iceland existing in the twelfth century, which may well be noticed in passing, though it is somewhat outside our immediate subject. The whole country was divided up into small communities, known as "Repps," the constitution of which appears to have

nstructive record from the
n Anglo-Saxon frith gild, the
Gild at Cambridge, the statutes
ollows : [1]—

his writing, is the declaration of the
which this society has resolved in
s' Guild at Cambridge. That then is the

combination of groups of neighbours, numbering
le not less than twenty, though permission could be
ed by law to form a Repp of even a lesser number.
at is of interest to us here is the provision made by the
epps against two fortuitous chances—disease amongst cattle
and loss by fire. Dealing with the former we find that petty
losses were not provided for, but if a man lost the fourth
of his stock or more, he could then call upon his co-members
to come to his assistance, and by contributions, to the height
of which, however, there was a limit, meet one-half of his
loss, the other half falling to be borne by himself. In order to
avoid, as far as possible, dishonesty in the matter of claims,
the applicant had to appear before the Repp assembly and
attest the accuracy of his claim, strengthening his assertions
by the production of flesh and hides of the dead beasts. If
several had suffered loss, they received compensation in
proportion to their losses, so far as the contributions reached.
Turning to the question of fire, we find equally careful
arrangements. The scheme of assurance applied to three
apartments of a man's dwelling, the living-room, the fire-
house, and the store-room. If any possessed a sleeping-
room in addition, he had to announce at the Frühlingsting
whether he elected to insure the fire-house or the sleeping-
room. A church attached to the dwelling was also insured
over and above. In case of fire, wearing apparel and food
supplies were covered, but not articles of ornament or
other goods, an interesting sidelight on the relative values
of the various kinds of personal property in those lands.
In the event of fire in a church, the tapestries on the walls,
the choir and the best bell were covered. The regulations
carefully restricted all compensation to one-half of the amount
of loss, the other half to be borne by the owner of the
property, and they further guarded themselves against
possible dishonesty in the matter of claims (or negligence),
by laying down that they could not be compelled to pay
compensation more than twice to the same individual. See
Dahlmann, *Geschichte von Dännemark*, ii. pp. 276, 281, 282.

[1] Thorpe, *Diplomatarium Anglicum ævi Saxonici*, pp. 610–13.

first, that each should give o
to the others, before God an
of true fidelity; and all the so
support him who had most right.[1]
brother die, let all the guildship
where he desired; and let him who shou
thereto pay a sester of honey . . .[2] let
tribute two pence to the alms, and thereo
what is fitting to St. (?) Ætheldryth. And i
guild-brother be in need of his fellows' aid, a
it be made known to the reeve (fellow) nearest t
the guild-brother, and—unless the guild-brother himself be nigh—the reeve (fellow) neglect it, let him pay one pound. If the lord neglect it, let him pay one pound, unless he be on his lord's need or confined to his bed.[3] And if any one slay[4] a guild-

[1] *I.e.*, in regard, presumably, to matters relating to the blood-feuds referred to later: Gross, *Gild Merchant*, i. p. 182. Stubbs, *Constitutional History*, i. p. 449, would include within the scope of the association mutual assistance of the members in case of theft. This is not borne out by the original: Gross, ibid., p. 182, and see also below, note 4.

[2] The original is here so corrupt that neither Thorpe nor Coote (*Romans of Britain*, p. 403) attempts a translation. Kemble, *Saxons in England*, i. p. 513, renders: "and let the guildship inherit of the dead half a farm"; Hartwig, *Untersuchungen über die ersten Anfänge des Gildenwesens*, p. 141: "half the cost of the funeral repast shall be met from the common chest"; Eden, *State of the Poor*, i. p. 591: "the society making up the rest of the expense, and furnishing each his quota towards the funeral entertainment."

[3] Coote, ibid., p. 403, has: "If any brother be in need of the aid of his comrades and it be made known to the land steward of the nearest brother, unless the brother be himself at hand, and if the steward neglect it he shall pay a pound. If the lord neglect it he shall pay a pound, unless he be compulsorily engaged on his lord's business, or confined to his bed by sickness"; Eden, ibid., p. 591, and note 4: "When any member shall stand in need of assistance from his fellow-members, notice thereof shall be given to the reeve or warden who dwells the nearest

[For note 4 see next page.

[redacted]othing for compensation but if the slayer scorns the com- the guildship avenge the guild- bear.[1] But if a guild-brother do alike. And if any guild-brother slay d he be an avenger by compulsion, and te for his violence, and the slain be a nynde man, let each guild-brother contribute -mark for his aid; if the slain be a ceorl, two s; if he be Welsh, one ora. But if the guild- rother slay any one through wantonness and with guile, let himself bear what he has wrought. And if a guild-brother slay his guild-brother through his own folly, let himself suffer on the part of the kindred for that which he has violated;[2] and buy back his guildship with eight pounds, or for ever forfeit our society and friendship. And if a guild-brother eat or drink with him who slew his guild-brother, unless it be before the king, or the bishop of the diocese, or the aldorman, let him pay one pound, unless, with his two bench-comrades, he can deny that he knew him.[3]

[1] *I.e.*, the feud: see p. 65, note 1.

[2] Kemble, *Saxons in England*, i. p. 514, has: "let him bear his breach as regards the relatives of the slain."

[3] *I.e.*, unless he can disprove the charge by their evidence: see Coote, *Romans of Britain*, p. 404.

Continuation of note from previous page.]
to that member, unless that member be his immediate neighbour (because in this case the warden might be presumed to be acquainted, without notice) that violence was offered to his next-door neighbour: and the warden, if he neglect giving him relief, shall forfeit one pound. In like manner, if the President of the Society shall neglect coming to his assistance, he shall forfeit one pound, unless he be detained either by the business of his lord, or by sickness."

[4] Kemble, *Saxons in England*, i, p. 514, has "steal from," and this rendering has the support of Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 231. See, however, Gross, ibid., p. 182, and above, note 1.

"If any guild-brother insul
a sester of honey, unless he ca
his two bench-comrades. If a
weapon, let the lord pay one pou
lord get what he can,[2] and let all the
him in recovering his money. And i
wound another, let the lord avenge it,[3] a
guildship together; so that seek he whate
may seek, he have not life. And if a follow
within the 'stig,' let him pay a sester of hone
and if any one have a 'fotsetla,' let him do th
same.[4] And if any guild-brother die out of the land, or be taken sick, let his guild-brethren fetch him, and convey him, dead or alive, to where he may desire, under the same penalty that has been said, if he die at home, and if the guild-brother attend not the corpse. And let the guild-brother who attends not his morning discourse, pay his sester of honey."

Wilda[5] gives us many valuable details of the

[1] Anglo-Saxon "cniht." See above, p. 58.

[2] *I.e.*, the lord is to pay the fine and recover, if possible, from the cniht: Gross, *Gild Merchant*, i. p. 183.

[3] "Wounded person's lord": Eden, *State of the Poor*, i. p. 592.

[4] Gross, ibid., p. 163, gives: "if a cniht sits in any one's way . . ."; "stig," according to Coote, *Romans of Britain*, p. 406, note 2, is wholly unintelligible, and can only be put down as a copyist's error; Eden, ibid., p. 593, gives a translation widely different from the above: "A knight, for waylaying any man, shall forfeit a sextarium of honey; and if he set any trap or snare for him, the penalty shall be the same"; Coote's rendering (ibid., p. 406) is: "If a cnibt take his seat indoors (*i.e.*, in the banqueting room of the gild), let him pay (*i.e.*, contribute) one sextarius of honey. And if any brother have a servant to sit at his foot, let him do the same." Kemble, *Saxons in England*, i. p. 514, translates "fotsetla" as "foot-sitter."

[5] See *Gildenwesen*, pp. 127–34: also Hegel, *Städte und Gilden*, i. pp. 123–56, 250–5.

Danish frith gilds.[1] "If a
hers must sit up with him. If
accompanied him to the grave
erings in order to provide masses
of his soul. If any suffered the loss
s each of the brethren was bound to
contribution to his aid; if he sustained
fire or shipwreck any considerable loss,
ceived from the members a specified contri-
ion as relief. If he became incapable of work-
g and supporting himself through mutilation, he
was assisted. If one brother found another on the sea in danger of his life or in captivity, he was bound to save him at the sacrifice of a part of his own goods; or to buy his liberty, but in that case he received compensation from the one assisted or from the brethren." [2]

If a gild-brother slew a man not belonging to the gild, those of the brethren who were at hand were in duty bound to exert their power in order to further his escape. Should the occurrence take place, for example, by the water, they were to provide him with a boat and oars, a drinking vessel, and a hatchet, after which the fugitive must rely on his own resources; if in the vicinity of a wood, then he must be accompanied to the edge of the wood, but not into the wood. If he stood in need of a horse, one must be found for him, and he was entitled to the free use of it for a day and a night, paying hire, however, for anything beyond that time; if he did not return it, he must

[1] According to Wilda, *Gildenwesen*, pp. 70, 113–15, there is no historical reference to them in Denmark before the beginning of the twelfth century, but his opinion would place their origin somewhat earlier. The best known of the early Danish gilds are those of Flensburg, Odense and Skanör. Cf. Hegel, *Städte und Gilden*, i. pp. 241, 242.

[2] Wilda, ibid., pp. 123, 124.

pay its price. Should he be
debt rested on the brethren.

But the gild not only endeav
life of the fugitive in safety for t
it stood as guarantor for the payme
amount of compensation lawfully dem
the circumstances, and if the member inv
difficulty in finding it himself they raised it
them by contribution.[1]

In the case of a gild-brother being slain by
stranger, the members came forward to assist th
relatives of the slain man to secure their rights.[2]
They only exercised force when private revenge
was allowed by law.[3] If it was not, then they stood
by the relatives in the matter of obtaining security
for the payment of the requisite compensation,
giving them all the support in their power, and
incidentally the members were forbidden to have
any intercourse whatsoever with the murderer until
all just claims against him had been met. In some
cases the gild appropriated a part of the compen-
sation for its services, while in others it would seem
that it actually stood in the place of the relatives
if the latter were not at hand. If the murderer
was unable to provide the needed security, then he
had to look to his own safety from the vengeance
of the aggrieved parties, though in later statutes a
greater amount of leniency began to be manifested,
and the question as to whether he should be spared
or not was left for decision by the king. When it
was a question of one gild-brother having slain
another, the gild often stood aside entirely and left

[1] The contributions were known by the name of "stuth."

[2] " . . . dass einem ihrer Genossen ungestraft ein Unrecht [nicht] zugefügt wurde. Es war dies der Hauptgrundsatz, worauf die Schutzgilden beruhten."—Wilda, *Gildenwesen*, p. 71.

[3] "The aim of the gilds was not to set up a new law but to secure fulfilment of the old."—Wilda, ibid., p. 71.

lt with by the family of the
lty with the custom of the times.
e regulations, however, the slayer
rtain sum to the heirs of the slain
sum to the gild-brethren, and was, in
t out of the gild, as a "niding" or a
whom no intercourse must be held. In
egulations, again, it was set forth as one of
rst duties of the gild to prevent one murder
n immediately resulting in a second. Certainly,
the deed were one of malice, no prohibitive steps
were taken, and the offender was simply excluded
from the gild—permanently, it would appear—and
left to the vengeance of the injured family. Had
he been forced to it, however, *i.e.*, in self-defence,
then he was not of necessity banished for ever from
the fellowship, but he could be allowed to re-enter
after having met the claims of the relatives in the
matter of the blood-money, with their consent and
subject to certain penalties. Under such conditions
he could be assisted by the gild—according to the
circumstances of the case and his pecuniary need—
to fulfil his obligations, in order to make recon-
ciliation possible.

Not only in matters of life and death, however,
but if it were a question of obtaining protection in
lesser things, the brethren were bound to render to
each other all the assistance in their power. Doubt-
less such assistance most often took the form of
sworn testimony on behalf of a comrade who was
either accused of some offence or was a party to
some action. In the latter case the mere presence
of a body of gild-members at the trial was not
without its influence, and this, too, was regarded in
the light of a duty. Should the case be in one of
the higher courts, attendance at which would involve
a considerable journey, then twelve members must
accompany the disputant, and their expenses were
to be met by the whole body.

As central government grew stronger, and the administration of justice surer and less casual in its operation, it is evident that the great need for the frith gilds—essentially the product of an age of disorder and oppression—tended to disappear, and they thus gradually became less prominent.[1] Still surviving for the purpose of mutual assistance in whatever necessity might arise, they continued nominally to concern themselves with measures directed against injustice and usurped authority, as also regulations for the due support and recognition of existing laws; but such matters drifted little by little into the hands of the authorities, and a new era of gild-development began to dawn, in which form and character of the gild were governed by a new factor, that of the vocation of the members, and the interests depending thereupon.[2]

[1] Dursthoff, *Die Entstehung . . . der oldenburgischen Brandkasse*, p. 5; Wilda, *Gildenwesen*, p. 371.

[2] Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 242, 243.

CHAPTER VI

THE MERCHANT GILD

IT is impossible to fix with certainty the exact period of the origin of the Merchant Gilds, but it is fairly safe to assume that the second half of the eleventh century saw their birth, as far as this country is concerned.[1] No trace of them reaches us from Anglo-Saxon days,[2] the earliest distinct references being in a charter granted by Robert Fitz-Hamon to the burgesses of Burford (1087–1107), and in a document drawn during Anselm's primacy (1093–1109),[3] but it seems clear that as an institution they go at least as far back as the Conquest.[4]

The forces which brought the institution into being in England are as obscure as the exact date of its inception is difficult to determine. Satisfying hypotheses for its existence are certainly not lacking. The close connection between England and Normandy after the Conquest—leading as it un-

[1] Ashley, *Introduction to English Economic History*, I. i. p. 76.

[2] Gross, *Gild Merchant*, i. pp. 2, 191.

[3] Gross, ibid., i. p. 5. Gross, ibid., ii. p. 37, gives a translation of the document. The merchant gild at Canterbury gave up eight houses within Burgate to the Convent of Christ Church, which transferred nine other houses in exchange for them: Merewether and Stephens, *History of Boroughs*, i. pp. 80–1.

[4] Stubbs, *Constitutional History*, i. p. 451. In reference to English merchant gilds, see Hegel, *Städte und Gilden*, i. pp. 441–57.

doubtedly did to increased foreign commerce, which in turn reacted beneficially upon internal industry—in conjunction with the fact that the now increased power of the English Crown offered better security for trade by affording greater protection to property and person,[1] might well be regarded as a sufficient explanation for the new appearance. Whether, however, it was simply a transplantation from Normandy, whether a reconstruction of older gilds to meet new requirements,[2] or whether a purely spontaneous growth called into being by new conditions, it seems impossible to decide.[3] What can be said with certainty is that after the Conquest the idea, having once taken root, spread rapidly.[4] In the municipal charters granted by Henry I. the gild merchant begins to be found, and as charters multiply under Henry II., Richard I., and John it is mentioned more and more frequently.[5] Of the hundred and sixty towns represented at one time or another in the Parliaments of Edward I. as many as ninety-two possessed merchant gilds.[6]

[1] Gross, *Gild Merchant*, i. p. 2.

[2] See Wilda, *Gildenwesen*, pp. 254, 255, referring to Berwick.

[3] Gross, ibid., p. 4.

[4] Ehrenberg, *Gilden*, p. 726.

[5] Gross, ibid., p. 5.

[6] Ashley, *Introduction to English Economic History*, I. i. p. 72. If we assume that one-third of the boroughs of England had a gild merchant in the thirteenth century we are probably very much underestimating the number: Gross, ibid., p. 22. Ashley, ibid., concludes that every town had its merchant gild, and, from the evident similarity of the four gilds in places so far apart as Totnes, Southampton, Leicester, and Berwick, whose ordinances have been preserved, that they had much the same organisation all over England. It is not clear whether there was one for London, but in any case by the recognition of its Commune in 1191 the citizens obtained complete municipal self-government, and consequently the same rights over trade and industry as a gild merchant would have exercised: ibid., p. 82.

On the Continent the gild merchant came into existence much at the same time as in England.[1] As such there is no mention of it in Western Europe before the middle of the eleventh century,[2] but it seems possible to trace a certain amount of continuity between the new bodies and pre-existent forms. The members of the old frith gilds were for the most part merchants, and with the renascence of commerce and the augmented importance of trade they began to include trade regulations in their statutes, to devote a portion of their funds to mercantile requirements, and to acquire for their body trade privileges. It is easy to conceive the change which would ensue by this process; in some cases the old society was ultimately transformed into a merchant gild; in others the new mercantile body grew up side by side with the old frith gild.[3]

It will be readily understood, therefore that it is extremely difficult to say exactly when and where the old forms ended and the new form began. The gild merchant, according to Gross,[4] was not prominent in Western Europe prior to the twelfth century, and whilst there are reports of associations of merchants of some description in very early times

[1] See Lamprecht, *Deutsche Geschichte*, iii. pp. 27 sqq., for an interesting theory that the merchant gilds originated with the Frisians, from the custom whereby merchants trading with the same places travelled in companies for the sake of mutual protection against violence; see also Doren, *Untersuchungen zur Geschichte der Kaufmannsgilden des Mittelalters*, specially pp. 160–4.

[2] Gross, *Gild Merchant*, i. p. 282.

[3] Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 243, 244. There appears to have existed in Cologne already in the eleventh and twelfth centuries, side by side with the Richerzeche, a great fraternitas mercatorum (also called fraternitas vini), which split up later into a number of mercantile companies.

[4] Ibid., p. 282

in Germany,[1] Roscher[2] does not believe in the existence of merchant gilds there at all before that century. According to the same authority the earliest of them were, further, associations of retailers who stood on the same social plane as the craftsmen, and who as a rule possessed a monopoly right.[3] This sort of association would seem to have been most prevalent, and, as a matter of fact, there does not appear to have been any considerable number of merchant gilds proper in Germany until at any rate a hundred years later.[4] About the fourteenth century gilds were also formed at the seaports by merchants and shippers trading with the same countries.[5] Whilst they had in some measure to do with the objects which we more particularly ascribe to the merchant gilds, their chief aim was mutual protection on the sea, and to this extent they may perhaps be more appropriately classed with the frith gilds.[6]

The merchant gild was a society formed primarily for "obtaining and maintaining the privileges of carrying on trade,"[7] which privilege was granted

[1] The Kaufmannsinnung in Quedlinburg in Prussian Saxony is said to have been already in existence in the year 993: Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 243, note 23.

[2] Roscher, *System der Volkswirtschaft*, iii. note 10 on p. 173.

[3] Such as the Gewandschneidergilden in Magdeburg 1183, Stendal 1231, &c., and the Krämergilden in Helmstedt 1247, Stendal 1299, &c.: Roscher, ibid., note 10 on p. 173.

[4] Ehrenberg, *Gilden*, p. 727; Gierke, ibid., p. 344; cf. Hegel, *Städte und Gilden*, ii. p. 494.

[5] Such as the Englands-, Flandern-, Schonen-, Bergenfahrer in Hamburg: Wilda, *Gildenwesen*, p. 267; Roscher, ibid., note 10 on p. 173; Ehrenberg, ibid., p. 727.

[6] Ehrenberg, ibid., p. 727.

[7] Ashley, *Introduction to English Economic History*, I. i. p. 71.

by royal charter.[1] In many of the charters there is a clause similar to the following :—

"We grant a Gild Merchant with a hanse and other customs belonging to the Gild, so that [or 'and that'] no one who is not of the Gild may merchandise in the said town, except with the consent of the burgesses."[2]

The members[3] "took an oath of fealty to the fraternity, swearing to observe its laws, to uphold its privileges, not to divulge its counsels, to obey its officers, and not to aid any non-gildsman under cover of the newly acquired 'freedom.'"[4] The revenue consisted in the main in the entrance fees,[5] and probably other dues and certain fines,[6] among which we notice such things as a bull, wine and

[1] Gross, *Gild Merchant*, i. pp. 7, 8, gives a translation of a charter of King John to the town of Ipswich in 1200, which furnishes an example of the most common form of grant of a gild merchant. He gives, too, an interesting account of the organisation of this gild after receiving its charter : ibid., pp. 23–6.

[2] Gross, ibid., p. 8.

[3] Women were not debarred from membership: Gross, ibid., pp. 29, 30.

[4] Gross, ibid., p. 29.

[5] These varied as between one merchant gild and another, and as between the various classes of members of the same gild. Thus we find in the Corporation records of the town of Reading, supposed to have been written about the reign of Henry VI., the following scales of admission to companies of the gild merchant, each of which companies comprised several trades :—

"MERCERS' AND DRAPERS' COMPANY.

Mercer or Draper	£4
Potuary	£3
Other trades	£2

CUTLERS' AND BELLFOUNDERS' COMPANY.

(Ranging from) Bellfounder	£3
(to) Wheeler	5s."

—Walford, *Gilds*, pp. 90, 91.

[6] Gross, ibid., pp. 28, 29 ; Ashley, *Introduction to English Economic History*, I. i. p. 71 ; Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 348.

beer, doubtless for the festive gatherings.[1] These were either on the occasion of the regular meetings of the gild merchant, most usually held yearly, half-yearly, or quarterly, and called "gilds" or "morning-talks"[2] (*morghespeche*), or on days specially fixed,[3] when there were "drynkyngs with spiced cakebrede and sondry wynes, the cuppes merilly servyng about the hous."[4]

The words quoted above, "no one who is not of the Gild may merchandise," which so frequently appear in the charters, lie at the root of the existence of the merchant gilds,[5] which implied a trading monopoly by the brethren as against the other inhabitants of the town.[6]

But it was not merely that they possessed this monopoly; as a general rule they exercised, as well, an exclusive right of regulating trade conditions,[7]

[1] Gross, *Gild Merchant*, i. pp. 33, 34; other things, see Wilda, *Gildenwesen*, p. 277. From a notebook of a Rathmann Knud Jörgensen Seeblad we find that in 1546 he gave 1 mark and a pound of wax to the merchant gild of Odensee, Denmark, either as entrance fee or yearly subscription. See also Wilda, ibid., p. 274.

[2] Gross, ibid., p. 32, note 6. The term was also applied to social and craft gilds, and seems originally to have had reference to the meetings of the town judiciary.

[3] Gross, ibid., pp. 32, 33.

[4] *Maire of Bristowe*, p. 79 : quoted from Gross, ibid., p. 33.

[5] Gross, ibid., p. 43.

[6] Ashley, *Introduction to English Economic History*, I. i. p. 71. Of the German gilds, Ehrenberg, *Gilden*, p. 727, says : "Their principal economic importance lay in the fact that only members of the gild had the right of retailing the most important commodities, and that they had often privileges in wholesale trade." See the case of the wine and cloth merchants of Cologne, for example : Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 347, note 15. Cf. Wilda, ibid., pp. 274, 275, for Denmark.

[7] The charter granted by Henry II. to Oxford distinctly lays this down (except for specified cases) : Stubbs, *Constitutional History*, iii. p. 582. See also Gross, ibid., p. 43.

and this is the main element of their statutes.[1] The whole trade or industry was, in fact, the common interest of the gild,[2] which therefore concerned itself largely with questions of fair dealing on the part of its members and the quality of the goods sold by them,[3] and also represented the economic interests of the town in the world without.

Not only did a great number of the merchant gilds bear the name of a patron saint,[4] but they possessed, too, many of the other characteristics of the body of gilds as a whole. Whilst that which may be termed their social side was not nearly so developed as was the case, for example, in the craft gilds, we find familiar provisions among their ordinances for attendance at the funerals of deceased members, and prayers for the dead,[5] frequent injunctions against slander and malice amongst the brethren, and provisions for the submitting of quarrels to the gild officers to avoid litigation.[6]

Side by side with these there are arrangements for mutual support: sick gildsmen were to be visited

[1] Gross, *Gild Merchant*, i., p. 64.

[2] Ashley, *Introduction to English Economic History*, I. i. p. 74.

[3] Ibid., pp. 75, 76. As to Germany, see Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 347, note 13, regarding the wine merchants and the quality of their wine and the severe punishment of adulterators. Cf. Ennen, *Geschichte der Stadt Köln*, ii. pp. 602, 603: in 1344 several were expelled from the town for the offence; in 1400 two offenders were branded on both cheeks and on the neck, beaten with rods, and banished from the town. We are not concerned here with the question as to whether or not the "exigencies of the times" justified the shackles which this institution placed on trade. See Gross, ibid., pp. 50, 51.

[4] Gross, ibid., p. 34.

[5] The gild merchant of Coventry, which obtained a charter in 1340 from Edward III., provides that chaplains shall be found if the means of the gild are sufficient, but the needs of the poor of the gild must first have been met: Smith, *English Gilds*, pp. 227, 228.

[6] Gross, ibid., p. 34.

and assistance was to be rendered from the funds of the society to brethren who had fallen into poverty and distress,[1] either by an absolute grant or by a loan free of interest,[2] and sometimes the daughters of such were to be dowered for marriage or the convent.[3]

If a gildsman of Southampton[4] were put into prison in any part of England, the alderman, the steward, and one of the wardens had to go, at the charges of the gild, to obtain his freedom; whilst at Berwick "two or three of the Gild" must "labour" on behalf of any one in danger of losing

[1] Walford, *Gilds*, p. 115; Gross, *Gild Merchant*, i. p. 34; Ashley, *Introduction to English Economic History*, I. i. p. 76. In the gild merchant of Coventry, in case of a member not being able to work or trade for himself, by reason of sickness or old age, the gild was to maintain him in such manner as befitted his need, and when any one did not leave sufficient to provide for his burial, the gild was to pay the cost: Smith, *English Gilds*, pp. 229, 230. The gild merchant of Southampton, in the case of one fallen into poverty and unable to provide for himself, set aside 1 mark for him when the gild was held: Walford, ibid., p. 117. For Germany, see Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 347. In the Danish gilds the principle of mutual brotherly support was emphasised: Wilda, *Gildenwesen*, p. 279. For examples, see Wilda, ibid., pp. 281, 286, where there was special provision for assisting those at sea; ibid., p. 275, the statutes run that if a brother lose his substance at sea or otherwise, he shall receive support according to the opinion of the Alderman, in order to be able to maintain himself, and if he cannot, each member shall give him a meal.

[2] The gild merchant of Coventry laid down, that if any one of the gild who had been helpful to the gild according to his means were overtaken by mishap, and, not by any fault of his own, fallen into poverty, the gild should advance him a free loan to trade with: Smith, ibid., p. 229.

[3] Ashley, ibid., p. 76.

[4] The Southampton gild merchant is supposed to have been important as early as 1199. The ordinances referred to here existed in 1473, and had been amended at various previous dates: Walford, ibid., p. 115.

life or limb, though only for two days at the gild's expense.[1]

In England the gild merchant seems to have been in the first place a private independent body, having no official connection with the town government, and being simply an incorporation of the traders of the borough for mutual protection; but during the twelfth century it began to be merged in the town constitution,[2] to become, in fact, a department of town administration with special functions concerning the maintenance and regulation of the trade monopoly.[3] Composed, doubtless, from the beginning, of the most influential members of the community,[4] it is not surprising that the town authorities should employ such a body for public purposes.[5]

It is wrong to suppose, however, that the gild merchant in England was at any time synonymous with the municipal corporation;[6] its grant in the charters was as an adjunct to other liberties, and not collateral.[7] The French "Communes," for example, embraced the whole of the town government and of the burgesses;[8] in England a burgess

[1] Ashley, *Introduction to English Economic History*, I. i. p. 75.

[2] Gross, *Gild Merchant*, i. pp. 158, 159.

[3] Gross, ibid., p. 43.

[4] The mediæval towns owed their origin, as a rule, to trade and industry.

[5] Gross, ibid., p. 159.

[6] Seligman, *Two Chapters on the Mediæval Guilds of England*, pp. 31, 32.

[7] Charter to Ipswich: Gross, ibid., pp. 7, 8; Merewether and Stephens, *History of the Boroughs*, i. p. 468. Authority was necessary before a gild merchant could be set up. In the twenty-sixth year of Henry II. the burgesses of Totnes paid a fine of 5 marks for setting up a gild without authority: Merewether and Stephens, ibid., p. 340.

[8] Gross, ibid., p. 102.

was not necessarily a gildsman,[1] though that later, with the great expansion of trade cantile interests must have become com dominant in many places, "the burgher me in the tradesman, and gildship becoming appurtenance of burgess-ship."[2] Whilst, therefo municipal constitutions did not owe their origi to the gild merchant,[3] the latter was one of the most valued liberties of the towns, played an important part in their evolution, and, if not concerned with the administration of justice and police,[4] yet was already in the twelfth and thirteenth centuries "an official civic body, an organic and constituent part of the municipal government"[5] dealing with the regulation of trade; for trade was, as we must remember, a matter between town and town.

It would appear to be an error to affirm that the gild merchant remained merely an association of traders "distinct from the municipal government of the borough,"[6] and rather an "appurtenant to it, than . . . one of its characteristic features."[7] But between this extreme and the other, namely, that the gild merchant was in fact identical with the municipal government, the truth is to be found.[8]

[1] Merewether and Stephens, *History of the Boroughs*, i. p. 81; Gross, *Gild Merchant*, i. p. 71. Nor, of course, was every inhabitant of the town necessarily a burgess: Merewether and Stephens, ibid., p. xiii; Gross, ibid., p. 70.

[2] Gross, ibid., p. 74.

[3] Merewether and Stephens, ibid., p. 118; Ehrenberg, *Gilden*, p. 726.

[4] Merewether and Stephens, ibid., p. 381.

[5] Gross, ibid., p. 61. See also Stubbs, *Constitutional History*, i. pp. 453, 454.

[6] Merewether and Stephens, ibid., p. xvi.

[7] Merewether and Stephens, ibid., i. p. 320; see also p. 322, and ibid., ii. pp. 1048, 1049.

[8] According to Gross, ibid., p. 283, the gild merchant is less often met as an "official and constituent part of the municipality" on the Continent than in England,

ld be pointed out that the term "mer- applied to the English merchant gilds does cessarily indicate that the latter were composed ely or even mainly of large dealers; the word prised, in reality, every one who traded, which uld bring within its scope a great many smaller nen.[1] It is clear, indeed, that even craftsmen were by no means excluded from the membership and privileges of the gild merchant,[2] and it is quite probable that they made up a large proportion of the numbers, at any rate in the earlier periods of its history.[3]

We are little concerned with the complex question of the relations between the gild merchant and the craft gilds. Suffice it to remark in passing that there is no evidence to uphold the theory to which Brentano[4] has given his support, that in England[5] there took place a "fierce struggle"[6] for mastery between the two bodies,[7] analogous to

and is seldom mentioned in municipal charters among the other liberties granted, more usually receiving a charter of its own like the craft gilds. Cf. Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 243. See Doren, *Untersuchungen zur Geschichte der Kaufmannsgilden des Mittelalters*, pp. 187 sqq.

[1] Gross, *Gild Merchant*, i. p. 107; Herbert, *History of the Twelve Great Livery Companies*, i. p. 1; Seligman, *Two Chapters on the Mediæval Guilds of England*, p. 31.

[2] Gross, ibid., pp. 107, 109, 114; Ashley, *Introduction to English Economic History*, I. i. p. 73; Walford, *Insurance Cyclopædia*, v. pp. 348, 350. Probably they were more often excluded on the Continent: Gross, ibid., p. 284.

[3] Gross, ibid., p. 107.

[4] *Die Arbeitergilden der Gegenwart.* Brentano's views are followed by Howell in the introductory chapter (dealing with gilds) of *Conflicts of Capital and Labor.*

[5] In regard to Scotland, see Gross, ibid., pp. 171, 172.

[6] Ditchfield, *City Companies*, p. 3.

[7] Gross, ibid., pp. 106, 109; Cunningham, *Growth of English Industry and Commerce during the Early and Middle Ages*, pp. 343–5; preface by Cunningham to Mary Bateson's *Cambridge Gild Records*, p. vii.

that on the Continent, and particularly in Germany, in the thirteenth and fourteenth centuries, between the "burgher oligarchy, who monopolised the municipal government, and were still further strengthened in many cases by union in a merchant gild, and the artisans organised in their craft gilds."[1] As a matter of fact, such a conflict was hardly possible in a country where royalty was potent,[2] and where the form of government in the towns probably inclined to be more democratic than oligarchic;[3] any struggle that took place would appear to have been of quite a different nature.[4]

Just as the beginning of the merchant gild is shrouded in a good deal of uncertainty, so is its ending. Probably its later course took many divergent phases in different places, but the main outstanding fact seems to be that with the expansion of trade, with ever-increasing specialisation and the multiplication of craft fraternities, the *raison d'être* of the gild merchant, and with it the institution itself, disappeared,[5] though the name survived long afterwards.[6] At a time, then, when the rapid growth of industries would have made it a

[1] Ashley, *Introduction to English Economic History*, I. i. pp. 78, 79.

[2] Gross, *Gild Merchant*, i. p. 109. Schmoller, *Strassburg's Blüte*, p. 34, says: "As no power of State existed which could bring help and reform from without, the Zunft-revolution was unavoidable," which expresses exactly the difference between England and the Continent: quoted from Gross, ibid., p. 109, note 4; Ochenkowski, *England's Wirtschaftliche Entwickelung*, p. 58.

[3] Gross, ibid., pp. 108, 110.

[4] Cf. Ashley, ibid., pp. 78 sqq.; Stubbs, *Constitutional History*, i. p. 453; Gross, ibid., p. 110.

[5] With the considerations of municipal development involved, we need not concern ourselves. Cf. Gross, ibid., p. 160.

[6] Ashley, ibid., p. 84; Gross, ibid., p. 159 sqq.

difficult matter for a single body to deal successfully with the business of supervision, the craft gilds arose to relieve it of its executive functions, whilst its legislative and judicial authority was ceded to the municipality. Whether this disappearance was more often an extinction or a metamorphosis, a continuation under new forms and with different objects,[1] whether indeed it is possible to generalise at all, are questions too large to be entered upon here.[2] [3]

It is needful to distinguish carefully the merchant gild from certain later mercantile associations, *i.e.*, the various Companies of Merchants, Merchant Staplers, and Merchant Adventurers.[4]

The Companies of Merchants, unlike the merchant gilds, which, as we have seen, included craftsmen in their ranks, were composed entirely of merchants,[5] and, generally speaking, "supervised the monopoly of trading in such wares as were

[1] Social and religions societies for example: Gross, *Gild Merchant*, i. pp. 158, 161–3; Ashley, *Introduction to English Economic History*, I. i. p. 84. The latter also suggests that possibly in certain cases the Merchant Adventurers grew out of the Gild Merchant.

[2] See Gross, ibid., pp. 158 sqq.

[3] A single merchant gild survives still in name—at Preston. Its ordinances of 1308 and 1328 and gild rolls from 1397 are printed in Abram, *Memorials of the Preston Gilds*, 1882, and *Preston Gild Rolls* (Record Soc., Lancs. and Ches., 1884): per Ashley, ibid., p. 67. The Gild Merchant has been "celebrated" at Preston once every twenty years for more than three centuries, the last occasion being in 1902: Gross, ibid., p. 165.

[4] Gross, ibid., p. 127.

[5] Gross, ibid., p. 128. See the definition of "merchant" above, p. 82, and note 2 on p. 85. Gross's suggestion as to the use of the word is interesting. He surmises that at first it comprised all who, in their trade, were in any way concerned with buying and selling, including, therefore, small shopkeepers and many handicraftsmen; that during the

not produced or dealt in by the other crafts."[1] It thus in many cases exercised to a great extent the functions of the old gild merchant.[2]

The Merchant Staplers[3] were merchants who had the monopoly of the purchase and export of the principal raw commodities of the country. Existing records concerning them do not go back further than the reign of Edward I.,[4] and the fact that till then the English export trade was in the

fifteenth and most of the sixteenth centuries it applied pre-eminently to all those who made a business of buying for resale—retail or wholesale—excluding now manual craftsmen ; and lastly, it came to have its present-day meaning of a dealer on a large scale. "In conception," he adds, "the old Gild Merchant represents the first stages ; the Companies of Merchants, the second ; the Staplers and Merchant Adventurers, the third" : Gross, *Gild Merchant*, i. p. 157.

[1] Gross, ibid., p. 129.

[2] Their organisation was very diverse in different places : ibid., p. 129. Gross gives detailed examples, ibid., pp. 130–9. For instance, the Company of Merchants of Alnwick, which still exists and the records of which begin in 1582, was composed of general shopkeepers dealing mainly in mercery and grocery wares. The last enforcement of their monopoly was in 1771, when they successfully prosecuted two persons for using the art or mystery of grocer. The Company of Merchants of Carlisle, which also still exists and possesses records going back to the sixteenth century, seems to have included all traders in Carlisle who were not actual manual workers.

[3] Stubbs, *Constitutional History*, ii. pp. 431, 432 ; Ashley, *Introduction to English Economic History*, I. i. pp. 111–13 ; Gross, ibid., pp. 140–7. The Staple in its original sense was the place to which (it was laid down) all English merchants were to bring their wares for sale or exportation. The institution was due to royal policy, and the frequent changes in the location of the Staples were often due to political rather than economic reasons. The most important statute regulating the Staple is the ordinance of 27 Ed. III.

[4] The Merchants, however, claimed to date as a separate body from the time of Henry III. : Gross, ibid., p. 140 ; Cunningham, *Growth of English Industry and Commerce during the Early and Middle Ages*, p. 311.

hands of foreign merchants indicates that they must have come into existence about that time. It was primarily a "fiscal organ of the Crown, facilitating the collection of the royal customs. It also ensured the quality of the goods exported by providing machinery for viewing and marking them."[1] With increased home manufacture and the corresponding falling off in the exports of raw commodities, and particularly wool,[2] and the enactments against the export of the latter[3] the Staple system little by little disappeared.[4]

Whilst the Merchant Staplers were concerned with raw commodities, the Merchant Adventurers[5] had the monopoly of the export of certain manufactured goods, principally cloths. They are thus described in 1601 by John Wheeler, who was their secretary:—

"The Company of the Merchants Adventurers consisteth of a great number of wealthie and well experimented Merchants, dwelling in diverse great Cities, Maritime Townes, and other parts of the Realme, to wit, London, Yorke, Norwich, Exceter, Ipswich, Newcastle, Hull, &c. These men of olde time linked and bound themselves together in Companie for the exercise of merchandise and sea-fare, trading in Cloth, Kersie, and all other, as well

[1] Gross, *Gild Merchant*, i. p. 144.

[2] Cunningham, *Growth of English Industry and Commerce in Modern Times*, pp. 298, 299.

[3] Gross, ibid., p. 147; Cunningham, ibid., pp. 504, 505.

[4] Gross, ibid., p. 147. The Company of the Staple of England still exists in name, and its members assemble periodically for festive services: ibid., p. 145.

[5] Gross, ibid., pp. 148–57; Ashley, *Early History of the English Woollen Industry*, pp. 67–71: their history is closely connected with that of the cloth industry; Schanz, *Englische Handelspolitick*, i. pp. 327–51, which see also in reference to the Merchant Staplers.

English as forreigne Commodities vendible abroad, by the which they brought vnto the places where they traded, much wealth, benefite and commoditie, and for that cause have obtained many verie excellent and singular priuiledges, rights, iurisdictions, exemptions and immunities, all which those of the aforesaid Fellowship equally enjoy after a well ordered maner and forme, and according to the ordinances, lawes and customes deuised and agreed vpon by common consent of all the Merchants, free of the said Fellowship, dwelling in the aboue-named Townes and places of the land."[1]

The original Company of Merchant Adventurers traded principally with the Netherlands,[2] but here, again, it was impossible to fix the period of the beginning of their activities with any degree of certitude. Various dates in the thirteenth century were claimed by them, the earliest being the year 1216, when the Duke of Brabant was said to have granted them certain privileges.[3] But probably Gross is correct in saying that it could scarcely have existed in its later form before the reign of Edward III. with its development of the cloth industry.[4] The authority, however, upon which the Merchant Adventurers as an organised body may be said to rest was a charter granted in 1407 by Henry IV.[5] Unlike the Staplers,[6] who, as we have seen, were an administrative agency of the

[1] Gross, *Gild Merchant*, i. pp. 149, 150.

[2] Gross, ibid., p. 148; Schanz, *Englische Handelspolitik*, i. p. 332.

[3] Schanz, ibid., p. 336.

[4] Gross, ibid., p. 149; Ashley, *Early History of the English Woollen Industry*, p. 68.

[5] Schanz, ibid., p. 339.

[6] With whom they were frequently in discord; Gross, ibid., p. 148; Cunningham, *Growth of English Industry and Commerce in Modern Times*, p. 216.

Government, the Merchant Adventurers were an independent body.[1] [2] [3]

[1] Gross, *Gild Merchant*, i. p. 148; Schanz, *Englische Handelspolitik*, i. p. 332; Ashley, *Early History of the English Woollen Industry*, p. 68; Cunningham, *Growth of English Industry and Commerce during the Early and Middle Ages*, p. 416.

[2] During the sixteenth century the Merchant Adventurers of a borough were sometimes incorporated as a separate fraternity; for example, those of Bristol received a charter from Edward VI., and those of Chester from Queen Mary: Gross, ibid., pp. 151, 152; Cunningham, ibid., p. 416. Whilst it is just possible that in certain cases the Merchant Adventurers of a town may have been the direct descendants of the old Merchant Gild (Gross, ibid., p. 155; Ashley, *Introduction to English Economic History*, I. i. p. 84), the distinction between the two is striking, for whilst the one was concerned wholly with foreign trade, and therefore excluded the artisan and the small retailer, the other, as we have seen, included such: Gross, ibid., p. 155. Companies and Merchant Adventurers still exist at Bristol, York, and Newcastle-on-Tyne: Gross, ibid., p. 152.

[3] Various new trading companies arose in the sixteenth and seventeenth centuries, of which the East India Company was the most powerful: Gross, ibid., p. 156; Cunningham, ibid., p. 416.

CHAPTER VII

THE CRAFT GILD—BEGINNINGS

THE question of the origin of the craft gilds is also a difficult one on which sufficient light has not yet been thrown to justify dogmatic assertion. It is tempting to find a connection with the old Roman collegia[1] and thus to trace a continuous line of development from early times, but such a view is not supported by any evidence,[2] and, apart altogether from the question of actual origin, to find an analogy between the virtual serfdom, under the late Empire, of the bodies of craftsmen associated in Roman colleges, and the independence and self-reliance of those of mediæval days, seems somewhat far-fetched.[3]

At the same time, however, there is probably something to be said for the suggestion that the break between the Roman and the barbarian world has been exaggerated by modern writers.[4] True

[1] As does Walford, *Insurance Cyclopædia*, v. pp. 359, 360.

[2] Below, *Zünfte*, p. 1426; Brentano, *Arbeitergilden*, pp. 35, 36; Roscher, *System der Volkswirtschaft*, iii. p. 794; Merkel, *Collegia*, p. 856; Seligman, *Two Chapters on the Mediæval Guilds*, pp. 50, 51. At the same time there may be some truth in the suggestion of Below, *Collegia*, p. 631, that there was a connection of some sort or other between the Roman colleges and the later Italian craft gilds.

[3] See Doren, *Untersuchungen zur Geschichte der Kaufmannsgilden des Mittelalters*, note 4, p. 9 (and on p. 10).

[4] Ashley, *Introduction to English Economic History*, I. i. p. 77.

it is that there exists the danger of mistaking a resemblance in external or internal structure, arising from the necessity for meeting similar needs, for an indication of generic descent; but there would appear to be a possibility, none the less, that some of the artisan corporations in Gaul had a continuous existence from the fifth to the twelfth centuries,[1] and even that organisations of servile craftsmen on the lands of the larger manors and monasteries[2] may have been consciously constituted on the model of the early Roman colleges as to certain essentials.[3] That, however, is a different thing from claiming any general evolution or continuity of development from college to craft gild.

[1] Ashley, *Introduction to English Economic History*, I. i. p. 77; Cunningham, whilst uttering a warning against pressing the analogy between English and Continental craft gilds too far, suggests that the craft gild in this country is of foreign extraction, having first been introduced here as "royally authorised organisations among alien artisans settled in English towns": *Growth of English Industry and Commerce during the Early and Middle Ages*, p. 337.

[2] "The tradesmen of the Anglo-Saxons were, for the most part, men in a servile state. The clergy, the rich, and the great had domestic servants, who were qualified to supply them with those articles of trade and manufacture which were in common use. Hence, in monasteries we find smiths, carpenters, millers, illuminators, architects, agriculturists, fishermen. Thus a monk is described as well skilled in smith-craft. Thus Wynfleda, in her will, mentions the servants she employed in weaving and sewing; and there are many grants of land remaining, in which men of landed property rewarded their servants who excelled in different trades. . . . By degrees, the manumission of slaves increased the numbers of the independent part of the lower orders. Some of the emancipated became agricultural labourers, and took the land of the clergy and the great, paying them an annual gafol, or rent; but many went to the burgs and towns . . . and became free burghers or burgesses."—Sharon Turner, *History of the Anglo-Saxons*, iii. pp. 91, 92.

[3] Ashley, ibid., p. 77; Roscher, *System der Volkswirtschaft*, iii. p. 795, note 2.

This brings us to a consideration of the manors. The old manorial system,[1] which we see in a highly developed form on the Continent as early as the reign of Charlemagne,[2] interests us to the extent that we find under it—at any rate on the larger estates—some attempt at specialisation of labour. The system, needless to say, was merely an extension of the old idea of the family: the prince, nobleman or prelate, as the case might be, was the acknowledged head, and all those living on the estate formed the "household."[3] Every such group being to all intents and purposes self-supporting, it is not surprising to find large bodies of servile labour composed not only of agricultural hands but also of craftsmen, who amongst them produced all those things which were needful to satisfy the somewhat simple wants of the manor house.[4] They received in return food and shelter, or in some cases, doubtless, a strip of land for their own personal use.[5]

On the smaller estates there was naturally little or no classification: one man would represent a number of different crafts in his own person; but on the larger ones, those of kings and princes, lords and high dignitaries of the Church, the number of the craftsmen became very considerable, and there was a rough division of labour.[6] The well-known "Capitulare de villis" of Charles the Great gives a vivid picture of the conditions, with

[1] See specially Arnold, *Studien zur deutschen Kulturgeschichte*, pp. 180–2.

[2] Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, pp. 7, 167.

[3] Schönberg, ibid., p. 165.

[4] Schönberg, ibid., p. 8; Ashley, *Introduction to English Economic History*, I. i. p. 76; Andrews, *Old English Manor*, pp. 234, 235, and 237, 238.

[5] Andrews, ibid., p. 234.

[6] Andrews, ibid., p. 235.

its catalogue of iron-, gold-, and silversmiths, shoemakers, saddlers, turners, carpenters, shield- and armour-makers, soap-boilers, beer-, cider-, and perry-makers, bakers, makers of nets for the hunt, for fishing and fowling, &c.[1]

As affording possibilities for easier and more efficient regulation and control of the various classes of labour, the latter seem in many cases to have been organised under the supervision of a nominee of the overlord. Though these associations of artisans on the larger manors were far from being craft gilds, yet they are important as possibly supplying a link in the development of the latter. Though nothing can be proved as to England, the assumption appears to be fully justified that on the Continent, and more particularly in Germany, such manorial organisations were in many instances transformed into craft gilds,[2] and to that extent it may be said that the one was the forerunner of the other.[3] Perhaps one of the most important impulses given to this movement was imparted by the Emperor Henry V., who reigned at the beginning of the twelfth century. This monarch did a kindly act to labour when he removed in the ancient seats of his race—Speier and Worms—the laws, among others, of "Sterbefalls" or "Buteil," by which the servile craftsmen on the manorial lands forfeited at their death all their goods to their lord, though at an early date, it is true, it had become the universal custom to allow the heirs to take a certain proportion of

[1] Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 167.

[2] Ashley, *Introduction to English Economic History*, I. i. pp. 77, 78; Brentano, *Arbeitergilden*, p. 36; Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 245, 246; Arnold, *Studien zur deutschen Kulturgeschichte*, pp. 181, 202; Schmoller, *Strassburger Tucher- und Weberzunft*, p. 380.

[3] Merkel, *Collegia*, p. 856.

the property, that is, to buy the heritage free. There was at any rate some explanation for the custom so long as the craftsmen were serfs living at the expense of another, producing directly and solely for the needs of the little community of which they formed part, but as soon as the basis of labour broadened a little and exchange began to be introduced, and labour began to shake off the shackles which for so long had bound it—to become, in short, self-supporting—the burden was felt to be a severe one. For not only was there the material loss, but that great incentive to industry and economy, the knowledge that the children would reap the full fruits of the parents' sacrifices, was greatly diminished. A start having once been made in these two towns, reform soon became universal.[1]

It is of the utmost importance, however, to remember that this seemingly close connection between manorial association and craft gild was one of "material" merely and not of form or development. The same individuals to a large extent went to compose the one as the other, and doubtless many of the formal regulations remained unchanged, but between the two institutions there was a gulf, which, once crossed, forbade the idea of return. Development continued not on the lines of the manorial bodies, but after the example of the free gilds.[2]

The manorial associations were associations brought about from without; very different, however, were the craft gilds. The craftsmen doubtless first associated for mutual objects of brotherhood; for mutual support against the ordinary vicissitudes of life; for mutual intercourse and

[1] Arnold, *Studien zur deutschen Kulturgeschichte*, pp. 196–9.

[2] Brentano, *Arbeitergilden*, p. 36; Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 246.

the mutual pursuit of recreative and religious objects, as well as for the protection of property and freedom.[1] Intercourse in the same walk of life would form the needful bond of sympathy, and, as was only natural, the gild soon began to busy itself with the practical matters of that particular calling and trade interests, until this object, because predominant in the interests of the individual members, became the predominant one of the gild, pushing other considerations into the background.[2] This, then, was the leaven, which wrought even within the manorial associations:[3] "that an association need not depend alone for its existence on a natural kinship or on some external form of union given to it by an overlord, but might find the ultimate ground of unity in the free will of its members, this was the new thought which, in the last three centuries of the Middle Ages, whilst old forms were falling to ruins, was bringing into existence from within . . . associations of the people."[4] They were not, therefore, born of the manorial associations: no progeny of dependence and oppression were they, but the offspring of a new independence and a new initiative, which at this time were beginning to shine in upon the darkness of dependent and downtrodden labour, freeing it from the ties which bound it to the land and agriculture.

"The gilds," says Wilda,[5] "sind nicht aus der Unterordnung und Abhängigkeit entstanden—aus

[1] Ashley, *Introduction to English Economic History*, I. ii. p. 168.

[2] Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 246; Ashley, ibid., pp. 139, 140.

[3] Gierke, ibid., p. 246.

[4] Gierke, ibid., p. 221.

[5] *Gildenwesen*, p. 307; see also Gierke, ibid., p. 246, and Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 8.

der Freiheit des Handwerkstandes sind sie hervorgegangen,"[1] whilst at the same time the gilds born of freedom led to freedom. Each is cause and effect of the other, and the gilds provided the handicrafts with the firm protection so important for their early development.[2] Though on the surface the change, as far as the manorial associations are concerned, may simply appear as the gradual loss of authority and subsequent deposition of the overlord's nominee and hence of the overlord himself, and the substitution of a nominee of the members,[3] this change was the outward token of what was nothing less than a complete transformation. It was the new spirit of self-realised independence of labour which brought the craft gilds into being, operating through that movement towards association which marked the Middle Ages, and which, already present before the rise of the towns, found added impetus in what has been well termed their "reiche Berufsgliederung."[4] This spirit of independence it was, too, which began to permeate the old manorial associations and instilled new life into

[1] Cf. Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 359: "Die Grundlage dieser Organisation war die Freiheit."

[2] Arnold, *Studien zur deutschen Kulturgeschichte*, pp. 208, 209.

[3] Arnold, ibid., p. 215.

[4] Below, *Zünfte*, p. 1426. One can hardly agree with the writer of the article, however, when he seems to point to the exercise of the "Zunftzwang" as a motive for combining. He seems to be confusing cause and effect: it was certainly a very natural result of such combinations. Probably, however, the first craft gilds which led the manorial associations out from their subservience and determined their future, whilst retaining some of the outward form of the latter, were really organisations of free craftsmen who had never known manorial rule, who had grown in importance and numbers in the free atmosphere of the towns: Arnold, ibid., p. 202.

them.[1] An inquiry into the causes which engendered such a spirit would involve us in an examination of those processes by which labour in Europe little by little emerged from the realms of subservience and serfdom and gradually worked out its emancipation. It is a study of intense interest, but one which extends far beyond the limits of the task which we have before us. One or two facts, however, may be noticed in passing.

The change came when the towns began to grow up, and the problem of the growth of towns is a complicated one. Just as it is impossible to say either that trade was the cause or the result of the growth of towns—cause and effect are so inextricably intermixed—so it is with the relation of town to craft gild.[2] Towns and manors developed to a certain extent side by side, and at the same time there was the process of manor merging into town, gaining safety and solidity under the protection of some great noble or churchman, and finally receiving a charter of self-government. Whilst every manor was potentially a town, "a town in embryo," towns grew up also about shrines; forts or the remains of Roman cities formed the nucleus; or some physical condition was the dominant influence, such as the intersection of important roadways, the possession of a port or tidal water.[3] Conjointly with the

[1] For a similar comparison between gilds and the ancient mark communities, see Lamprecht, *Deutsche Geschichte*, iii. pp. 25, 26.

[2] "Nicht in der entstehenden Stadt spielen die Gilden, Zünfte, eine grosse Rolle, sondern sie beeinflussen erst im Laufe der städtischen Entwickelung die Verfassung."—Below, *Zünfte*, p. 1426.

[3] Cunningham, *Growth of English Industry and Commerce during the Early and Middle Ages*, pp. 94–7. The want of ready money on the part of king and nobles, especially in connection with the Crusades, had an important bearing on the growth of towns, affording them favourable opportunities for purchasing their freedom: ibid., pp. 211, 212.

growth of towns we begin to find a body of men who had become separated from the soil, and who turned to the crafts, no longer for the purpose of supplying the needs of some overlord, but with the object of personal gain. It would be a tempting theory to put forward, that this new free labour was the outcome of a gild system having its roots in the old bodies of specialised craftsmen on the large estates, and that, as a matter of fact, we have to thank the gilds for the new and sturdily independent crafts. Such a theory, however, cannot be sustained.[1] In reality the great new idea which at the outset was forcing itself slowly and painfully into being was not the gild-idea at all, but the idea of free competition in production, and this was the very thing which the craft gilds, when they had grown a little, set themselves to limit: clearly, any subordination of individual interests to those of a body was, from this point of view, a conservative and not a revolutionary movement.[2] For our present purpose it is sufficient to say that these new conditions were the outcome of broad economic forces difficult to limit or define, as was also the still-continuing specialisation of crafts, and the solidifying of each new branch into a recognised trade apart.[3]

In this process of specialisation is particularly to be noticed that aspect of it which was already a tendency on the manors themselves, namely, the separation and subsequent complete alienation of the processes which produced the raw material

[1] Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, pp. 8, 168.

[2] Schönberg, ibid., p. 8.

[3] The laws of the period in their reference to craftsmen of various kinds give evidence of this process of specialisation: Schönberg, ibid., p. 166.

from those which worked it up.[1] In primitive times, of course, the two were quite unseparated, being in the hands of the same persons. But on the manors, though there was, from the circumstances of the case, a great deal of overlapping, yet frequently those who worked in the production of the raw material had no hand in its manufacture and vice versa.[2] The great result of this gradual divorce was naturally, on the one hand, to remove the business of manufacture entirely from the land. The crafts had formerly been totally subservient to agriculture;[3] to complement it and further its progress had been their function—they were supported by it and accessory to it. The result, on the other hand, was to create a capital in labour apart from land and devoted to this particular end.

It was the period, then, at which labour first began to acquire an independent market value, just as it was the period at which commodities began to acquire an independent market value,[4] that is to say, an exchange value. Previously, as we have seen, commodities were merely produced for the consumption of a particular group, save in the probably exceptional cases where the overlord permitted production for individuals or communities outside.[5]

Such were the surroundings in which the gilds grew up, and though we cannot claim for them the honour of having produced these conditions, yet they did by their influence do a great work in fostering, encouraging, and strengthening the new body of labour, and in the preservation for labour of that position of freedom and independence which

[1] Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 167. [2] Schönberg, ibid., p. 166.
[3] Andrews, *The Old English Manor*, p. 235.
[4] Schönberg, ibid., p. 8.
[5] Schönberg, ibid., p. 165.

had been acquired for it through other economic influences.[1]

In speaking of the origin of any institution it is seldom possible to point to one set of causes as the force which brought it into being. Society is organised on such a complicated basis, there are so many tides and currents, so many cross-winds, that any cut-and-dried explanation is likely to be a false one. So here whilst we take into account social causes, summed up in the new standing of labour under conditions of freedom, and possible physical causes, if we may so term them, manifested in the existence ready to hand of bodies of men already organised on the manors, there still remains the political side of the question. This involves the whole problem of the relationship between craft gild, gild merchant, and town constitution generally, which we can better touch upon later. Suffice it, meanwhile, to point to three main opinions relative thereto, each with a certain weight of possibility.[2] The view may be taken, first, that the craftsmen in combining aimed at checking a falling off in their condition and encroachments on their earnings and at guarding themselves against the "abuse of power on the part of the lords of the town, who tried to reduce the free to the dependence of the unfree."[3] On the other hand, it may be held that "gilds were organised among the inhabitants who worked at one craft, with the consent and approval of the municipal government, and were utilised for certain purposes of police and regulation by the town officials."[4] Or again we may accept the inter-

[1] Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, pp. 8, 9, 168.

[2] Webb, *History of Trade Unionism*, pp. 14, 15.

[3] Brentano, *History and Development of Gilds*, p. 54.

[4] Cunningham, *Growth of English Industry and Commerce during the Early and Middle Ages*, p. 337.

mediate view that the gilds were autonomous bodies of craftsmen responsible for the framing of their own craft regulations, the latter subject, however, to a real but not very clearly defined right of veto from the side of the municipal government for the good of the citizens.[1]

[1] Ashley, *Introduction to English Economic History*, I. ii. pp. 24 sqq.

CHAPTER VIII

THE CRAFT GILD—DEVELOPMENT

TURNING to the question of the actual period at which the craft gild may be said to have made its appearance, one is probably safe in pointing to the first half of the twelfth century, at any rate so far as England and Germany are concerned.[1] In every civilised country the manufacture of cloth has, for obvious reasons, been the one which has first grown to importance, and it is no surprise therefore to find associations of weavers among the very first of the craft gilds. Already prior to the year 1149 there seems to have been one in existence at Cologne, whose stalls we find in that year on the west side of the market-place.[2] Of the bedtick-weavers of Cologne (1149),[3] the linen-weavers of Brunswick (1156–80), the shoemakers

[1] Wilda, *Gildenwesen*, p. 313; Gross, *Gild Merchant*, i. p. 285; Stubbs, *Constitutional History*, iii. p. 582; Below, *Zünfte*, p. 1425; Seligman, *Two Chapters on the Mediæval Guilds of England*, p. 56; Ehrenberg, *Gilden*, p. 726. Possibly there were already craft gilds in Germany in the eleventh century, as, for example, at Cologne: Below, ibid., p. 1425; Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 244. Cf. Hegel, *Städte und Gilden*, ii. p. 495.

[2] Ennen, *Geschichte der Stadt Köln*, i. p. 538. Cf. Gierke, ibid., p. 245.

[3] Ennen, ibid., p. 538; Gierke, ibid., p. 245; Arnold, *Studien zur deutschen Kulturgeschichte*, p. 204; Roscher, *System der Volkswirtschaft*, iii. p. 796, note 4; Below, ibid., p. 1425.

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of Magdeburg (1158),[1] the turners of Cologne (1179–82),[2] the tailors (1183), and the painters (1197) of Magdeburg,[3] the charters are still preserved. From that time onwards craft gilds are mentioned more and more frequently, and from the thirteenth century they are of importance, the main branches of industry in the towns being as a rule organised in gilds.

Turning to England, we find the first evidence of them in the Pipe Roll of 1130, at which date we see the weavers organised in London, Lincoln, and Oxford, paying yearly a certain sum to the King in exchange for his authorisation,[4] but it is conceivable that there were actually unauthorised gilds in existence at an earlier period.[5] Early in the reign of Henry II. there were weavers' gilds in York, Winchester, Huntingdon, and Nottingham.[6] As in Germany, the thirteenth century was the period of the main increase in their number,[7] and the fourteenth and fifteenth centuries saw the gild system at the zenith of its power and efficiency.[8]

[1] Roscher, *System der Volkswirtschaft*, iii. p. 796, note 4; Wilda, *Gildenwesen*, pp. 315, 316. The shoemakers' gild was probably in existence prior to 1157, as in that year, according to Wilda, Archbishop Wichmann confirmed their privileges in return for a yearly payment. There seem to have been already others in Magdeburg.

[2] Below, *Zünfte*, p. 1425.

[3] Roscher, ibid., p. 796, note 4.

[4] Ashley, *Introduction to English Economic History*, I. i. p. 81, whom see also for other examples.

[5] Wilda, ibid., p. 313.

[6] Wilda, ibid., p. 314. Cf. Herbert, *History of the Twelve Great Livery Companies*, i. pp. 23, 24.

[7] Arnold, *Studien zur deutschen Kulturgeschichte*, p. 208; Ashley, ibid., p. 76; Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 7; Below, ibid., p. 1425. Cf. Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 359.

[8] Gross, *Gild Merchant*, i. p. 117; Ditchfield, *City Companies*, p. 5. Cf. Ashley, ibid., p. 92; Below, *Gilden*, p. 1105.

The English craft gilds, then, depended for their right of existence on the sanction of some higher authority,[1] whether it was the Crown or the municipality,[2] and this permission was generally bound up with the payment of an annual impost for the privilege.[3] Thus in the reign of Henry I., as we learn from the Pipe Roll,[4] the weavers of Oxford paid two marks of gold, those of Huntingdon forty shillings, and those of Lincoln one mark of gold that they might have their gilds, the shoemakers of Oxford five marks that they might recover theirs.[5] The formation of gilds without permission was naturally an illegal act, and involved the penalty—not of dissolution, but what was more profitable—of a heavy money payment. So in the year 1180 eighteen of these "adulterine" gilds, as they were termed, of London, were fined varying sums for not having bought the right to associate, and doubtless it was the same in other towns.[6]

A similar sanction was demanded on the Continent,[7] and as a rule a yearly tax was imposed.[8] In Bâle all the craft gilds were set up under the sanction of town and bishop.[9] One of

[1] Ochenkowski, *England's Wirtschaftliche Entwickelung*, p. 80. As to all classes of gilds, see Wilda, *Gildenwesen*, pp. 52, 53.

[2] Gross, *Gild Merchant*, i. p. 113.

[3] Gross, ibid., p. 114; Wilda, ibid., p. 250.

[4] Pipe Roll, 31 Hen. I., pp. 2, 5, 48, 109; Stubbs, *Constitutional History of England*, i. p. 447, note 3.

[5] Compare, in later days, the regulations regarding the Gild of Cordwainers, Exeter (first incorporated 1387). All powers of the gild were to be surrendered to the corporation of the city every year, and a fine paid for the renewal of them: Smith, *English Gilds*, p. 334.

[6] Ashley, *Introduction to English Economic History* I. i. pp. 81, 82; Stubbs, ibid., p. 454, iii. p. 585; Herbert *History of the Twelve Great Livery Companies*, i. pp. 23, 24.

[7] Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 374, 375.

[8] Wilda, ibid., p. 326.

[9] Gierke, ibid., p. 374, note 71.

the earliest German craft gilds of which we have record, the shoemakers' of Magdeburg, had its rights confirmed by Archbishop Wichmann in 1157 in consideration of a yearly payment of two pounds silver, and from the document it is evident that there already existed in the same town other gilds which had received the sanction of the Archbishop and paid a sum of money, larger or smaller as the particular handicraft was of greater or lesser importance.[1]

What applied to the forming of these associations also extended to their working. At any rate at first, being of necessity more or less insignificant bodies paying for their existence, in contrast to the gild merchant whose existence was secured by the town charter itself, the craft gilds may quite conceivably have found it difficult to maintain their rights against the municipal authorities;[2] for not only were they subject to the latter in political and military matters,[3] as was but natural, but their statutes were subject to confirmation by them.[4] They were economic and not political organs,[5] and their activities were limited to the care of the more technical matters of their particular trade, to the exclusion of wider legislative and administrative affairs.[6]

[1] Wilda, *Gildenwesen*, pp. 315, 316. So we find the Danish craft gilds were not to be inaugurated without the authority of the king or the magistrates: Wilda, ibid., pp. 318–20.

[2] Ashley, *Introduction to English Economic History*, I. i. p. 87.

[3] Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 378.

[4] Ashley, ibid., ii. p. 159; Below, *Zünfte*, p. 1427. Probably in many cases this did not constitute a very severe restraint, and may even have become to a great extent simply formal: Ashley, ibid., i. p. 85.

[5] Gross, *Gild Merchant*, i. pp. 112, 113.

[6] For the judicial powers of craftsmen, see Ashley, ibid., i. pp. 85, 86; see also Below, ibid., p. 1427.

It was not long, however, before economic elements began to work important changes, and to give to the craft gilds a more prominent place in the town polity.[1] Doubtless such elements were many, but among the chief may be noted, on the one hand the gradual specialisation in industry, which little by little multiplied the number of the craft gilds within the town itself, thereby absorbing an increasingly large proportion of those craftsmen who hitherto had been members only of the gild merchant;[2] and on the other, the gradual extension of markets. The specialisation was but an indication of the importance of industry in the aggregate, and as industry increased in importance the craft gilds increased in power. With increasing power they were able to assume greater functions, and to press their claims for a larger share of civic responsibility. At the same time, as the members of the gild merchant were with fewer and fewer exceptions gathered either into the craft gilds or the Companies of Merchants (which included dealers or merchants alone as distinct from the trading artisans),[3] the functions of the gild merchant began to be spread over the individual gilds attached to various branches of industry and commerce: what it had done for trade in general was now beginning to be done by each trade for itself.[4]

The other outstanding element, the widening of the market and the consequent weakening of the idea that every town was for the purposes of trade a closed community[5] with interests in antagonism with those of every one else, obviously tended to

[1] Gross, *Gild Merchant*, i. pp. 125, 126.

[2] Gross says that these craftsmen still remained in the gild merchant: ibid., p. 115.

[3] Gross, ibid., pp. 116, 117, 128.

[4] Gross, ibid., pp. 115–17.

[5] Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 7.

diminish the necessity for a general trade organism in each town to represent those interests. It was as a natural result of this that the chief executive functions of the gild merchant began to devolve one by one upon the various craft gilds.[1] Generally speaking, this transition was taking place throughout the fourteenth century, more or less rapidly according as the industrial prosperity and activity of the town was great or small; in the fifteenth century it was complete.[2]

There may have been a parallel influence at work assisting to the same end. Whilst at their birth doubtless they were either held in suspicion by the Crown or neglected altogether, a tendency seems to have developed, from the reign of Edward I. onward, not only to tolerate but to encourage them.[3] This may probably be ascribed in part to the reassurance which their orderly progress had given, in part to a recognition of their value both in regulating and policing the different branches of industry, and also as a counterpoise to the power of the governing bodies in the towns.[4]

Analogies are always dangerous, and nowhere more so than in the realm of economic development. It is so easy to be misled into mistaking superficial resemblances for inherent affinities; into the assumption that because two organisms possess exterior indications of similarity, their course of development will therefore be similar, irrespective of surrounding circumstances and historical setting. Such was Brentano's error [5] when he assumed that English craft-gild history could be interpreted from that of the Continent. For, whilst it is true that

[1] Gross, *Gild Merchant*, i. p. 160.
[2] Gross, ibid., pp. 117, 127, 159.
[3] Ashley, *Introduction to English Economic History*, I. i. p. 87.
[4] Ashley, ibid., p. 87.
[5] *Die Arbeitergilden der Gegenwart.*

there is little distinction to be drawn between the form and even the aims and objects of English and Continental craft gilds, yet the surrounding circumstances were totally dissimilar. Large finance developed earlier on the Continent than in this country: in fact, for years we were dependent to a great extent on foreign capitalists. Whilst, therefore, we find the German gild merchant dominated by a class of merchant lords who resented the rise of the craft gilds and their demand for political power, in England we find merchants and craftsmen side by side in the gild merchant on terms of friendly equality. Whilst in England the change which took place was economic, and the transference of power was in the main effected peacefully and doubtless by almost unconscious stages [1] with only here and there signs of conflict,[2] in Germany, as in the Netherlands, the change was only achieved after a tremendous struggle. The patricians of the gild merchants resented and resisted the claims of the craftsmen for more independence and more political significance; and the latter, not finding it accorded voluntarily, set themselves to grasp it by force.[3] The strife had already begun in the thirteenth century, but the fourteenth century is the great period of the struggle,[4] and, as if prompted about the same time by the same impulse in a day when communication and the spread of information must have been too slow a matter to be accountable for any general upheaval,

[1] Gross, *Gild Merchant*, i. pp. 117, 126, 285.

[2] Cunningham, *Growth of English Industry and Commerce during the Early and Middle Ages*, p. 337.

[3] Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 6; Gross, ibid., p. 285; Ashley, *Introduction to English Economic History*, I. i. pp. 78, 79; Gross, *Genossenschaft*, p. 172; Below, *Zünfte*, p. 1430; Arnold, *Studien zur deutschen Kulturgeschichte*, pp. 216, 217.

[4] Below, ibid., p. 1430. Cf. Arnold, ibid., p. 218.

we find the craftsmen of the towns seeking to lay violent hands on those rights from which, by any other road, they found themselves debarred. The struggle was a bitter one, and, though there were numerous exceptions, it ended for the most part in favour of the crafts.[1] It was the death-blow to a "patrician" class which wished to be neither noble nor burgher but both at once; it inaugurated in the towns classification not according to birth but according to calling.[2]

The theory of Brentano and his followers, that this struggle had its analogue in the history of English craft gilds, has long since been discarded by historians. It is not only that, with a central government which had been steadily increasing in strength since the Conquest, such a struggle was impossible, but, as we have seen, merchants and craftsmen were to be found in the gild merchant on terms of complete equality.

One of the main doctrines of the craft gild was the exclusion of all competition[3] (as we understand the term to-day) between its members. Competition existed to this extent, it is true, that the best workman would doubtless in the long run obtain the most orders; in fact, the very system ensured this to a great measure, putting a premium on personal efficiency by forbidding the free play of individual enterprise in the matter of organisation of paid labour and manipulation of the supplies of raw material. But it would have been of little

[1] Below, *Zünfte*, p. 1430.

[2] See Arnold, *Studien zur deutschen Kulturgeschichte*, pp. 218, 232.

[3] Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 7; Below, ibid., p. 1429; Ennen, *Geschichte der Stadt Köln*, ii. p. 628. It was an expression of the character of brotherhood in the gilds: Roscher, *System der Volkswirtschaft*, iii. p. 803; Brentano, *Die Arbeitergilden der Gegenwart*, i. p. 53.

avail to restrict competition amongst the members themselves if they were at the same time to be subject to it from without. The gild possessed the monopoly of its particular trade within the particular town; it is the expression of the recognition of the craft gilds by the authorities.[1] If an outsider wished to exercise that craft he must first seek admission to the corresponding gild.[2] Such admission was hardly ever withheld in the earlier days of the movement,[3] for the obvious reasons that, on the one hand, the gilds being in their infancy it behoved them to add to their numbers as far as possible, both for general as well as for political reasons;[4] whilst, on the other hand, we can compare the development of the towns in their early stages to that of developing colonies, where there is room and to spare for all comers, and where in fact every new comer represents a potential increase to the prosperity of all the others there.[5] But naturally in course of time both these considerations tended to disappear, and little by little, from the fourteenth century onward,[6] we find the craft gilds being overtaken by that spirit of exclusiveness and that policy of refusal of new members which characterises so many of

[1] Below, *Zünfte*, p. 1427.

[2] Gross, *Gild Merchant*, i. p. 114; Roscher, *System der Volkswirtschaft*, iii. p. 794; Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 362; Arnold, *Studien zur deutschen Kulturgeschichte*, p. 211. This is found as early as 1149 in the case of the Cologne bedtick-weavers: Gierke, ibid., p. 245; Arnold, ibid., p. 211.

[3] Below, ibid., p. 1427; Gierke, ibid., pp. 361, 362; Arnold, ibid., pp. 211, 212.

[4] Below, ibid., p. 1427. [5] Below, ibid., p. 1427.

[6] Ashley, *Introduction to English Economic History*, I. i. p. 194; Below, ibid., p. 1427. Even in the fifteenth century this tendency had not yet developed very far: Gierke, ibid., p. 362. Cf. Ennen, *Geschichte der Stadt Köln*, ii. pp. 623, 630.

the later associations.[1] It is to a large extent an indication of the deterioration of the craft gilds.[2]

Religious considerations, which at all times have played an important part in the history of the gilds, are present here also.[3] Patron saints are honoured, there are provisions for the maintenance of altar or lights in the churches,[4] for services for prayer and devotion, for assistance to pilgrims,[5] for the attendance of the brethren under penalty of a fine[6] to accompany the body of a deceased member to the grave, and for the singing of masses for the souls of the departed as well as the distribution of alms among the poor, the recipients to offer prayers for the deceased.[7]

We even find that some of the wealthier gilds maintained their own priests for the benefit of the members.[8] As time went on, however, this phase became less and less prominent, and ultimately sank quite into the background. Possibly the

[1] Below, *Zünfte*, p. 1427. Cf. Pike, *History of Crime*, i. p. 184.

[2] Arnold, *Studien zur deutschen Kulturgeschichte*, p. 212.

[3] Brentano, *Die Arbeitergilden der Gegenwart*, i. p. 55; Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 384, 385, 387; Ashley, *Introduction to English Economic History*, I. i. pp. 91, 92; Below, ibid., p. 1428; Arnold, ibid., p. 214; Wilda, *Gildenwesen*, p. 335.

[4] The ordinances of the Whittawyers, 1346, for example, provided for a candle to burn in the Church of All Hallows, near London Wall: Ashley, ibid., p. 92.

[5] *E.g.* Gild of Tailors, Lincoln (founded 1328); Gild of Tylers, Lincoln, (founded 1346): Smith, *English Gilds*, pp. 182, 184.

[6] Gierke, ibid., p. 387, note 127.

[7] In the Gild of Fullers, Lincoln (founded 1297), for instance, on the death of a brother or sister the rest were to give a halfpenny each to buy bread to be given to the poor for the soul's sake of the dead: Smith, ibid., p. 180.

[8] Ashley, ibid., ii. p. 154; Herbert, *History of the Twelve Great Livery Companies*, i. p. 70.

process which Gierke[1] suggests was a very usual one: the contributions and bequests, to provide for religious observances in general, were regarded not as a portion of the ordinary gild funds but as an independent fund for this particular object; the sums began to be separately administered by those chosen for the purpose, and special statutes were framed. Members were added who could have had no possible claim on membership on the ground of any connection with the craft. A further stage of development followed when in the course of time this subsidiary body came to be regarded, if not as a separate entity, at any rate as a portion of the gild quite apart from its other functions, and ultimately there was a complete division of the one from the other. What happened was that in the end the gild resolved itself into two entirely distinct gilds, the one pursuing industrial interests, and the other set apart for religious purposes.[2] The members might be to a large extent common to both, and doubtless the craft gild continued to retain some privileges in the matter of the direction of the religious body.

[1] *Das deutsche Genossenschaftsrecht*, i. pp. 385, 386.
[2] Further see Gierke, ibid., p. 452.

CHAPTER IX

THE CRAFT GILD—ACTIVITIES

CRAFT gilds in general may very well be defined in the words of Schmoller's definition of German craft gilds, for there was little difference in aim or organisation between those of this country and those of the Continent.[1] He describes them as "associations of those following a particular craft whose common concern was the care of their trade interests and their social-political interests, but whose activities extended also to all branches of their social life."[2]

There were thus two distinct sides to their activities, the one occupied with matters of common concern to each member of the particular craft—which affected the members, therefore, as craftsmen; and the other which followed him into his domestic life and relationships—which affected him as the member of a social class.[3] These latter needs had

[1] Brentano, *Die Arbeitergilden der Gegenwart*, i. p. 47; Walford, *Gilds*, p. 36.

[2] Schmoller, *Die Strassburger Tucher- und Weberzunft*, p. 375. Below defines them from a different standpoint as, "associations formed under the sanction of the authorities, membership in which was the necessary preliminary to the exercise of a particular craft within the community": *Zünfte*, p. 1425.

[3] The preponderance in the surviving statutes of the London craft gilds, for example, of regulations concerning trade and manufacture over those dealing with relief of needy members, whilst it by no means points to the non-

previously been met by the various religious and social and frith gilds which existed both before and after the inception of craft gilds, and which, when the old family system came into disuse, took over that responsibility in regard to its members which had formerly attached to the position of head of the family.[1] There was this distinction, however, that the craft gilds did not require to concern themselves with the protection of life and limb or with measures against robbery or pillage; these duties had by this time been assumed by the authorities,[2] and the gilds could thus turn their attention to economic considerations. The craft gilds, therefore, busied themselves with every side of the industrial and social life of the brethren, and even where social regulations and provisions do not appear in the forefront of the statutes of the body, as in the case of the later at any rate of the London craft gilds, we are probably safe in assuming that it was not because this department of their functions had been lost sight of with the growing importance of the other side, but simply that it was more or less taken for granted as being inherent in the nature of such an association, and therefore not needing to be specified in detail. It must be stated, however, that as trade increased and the handicrafts became more and more flourishing, industrial matters occupied a greater and ever-increasing proportion of the time and energy of the gild officials, and ultimately became their main charge; but, after all, the paternalism which sought

existence in many cases of the latter kind of activity (which was, after all, inherent in the very nature of the association), yet indicated the place of secondary importance which it ultimately took: Ochenkowski, *England's Wirtschaftliche Entwickelung*, p. 76 and note 1.

[1] Brentano, *Die Arbeitergilden der Gegenwart*, i. p. 47.

[2] Brentano, ibid., p. 47.

to exclude competition and limit the production of individuals was only a part of the same paternalism which long before had occupied itself with the spiritual and social needs of gild members.

Dealing then first with the industrial side of the question, we find that "the teaching of the Church and the practical politics of the towns and the craft gilds of the middle ages, inspired by independent motives though mutually influenced the one by the other, made in the main the same demand. The authorities, they said, must see that in every exchange, every sale or purchase, the balance is held even; the gain to the seller shall not exceed a just measure: the 'pretium justum' shall ever be aimed at in trade; the town shall do its utmost to guarantee to the citizen the field of his activities in the pursuit of a livelihood. Business shall be permeated by a christian-ethical spirit and the authorities are the guardians of a christian order in economic matters."[1] Starting from this fundamental ideal, the gild system became one of minute control of the craft.[2] On the one hand, great stress was laid upon the question of the quality of the work done, and, what is to some extent part of the same thing, on the conditions under which it was done; and, on the other hand, upon a careful regulation of the supply of the trade material. Wisely considering that a high standard in the quality of the finished article was essential to the development and well-being of the craft, the gildsmen made stringent regulations and imposed penalties to prevent delay, fraud and dishonest dealings, and bad work,[3] and to ensure satisfaction to customers, and no distinction was to be made

[1] Below, *Zünfte*, p. 1428.

[2] Below, ibid., p. 1428; Ashley, *Introduction to English Economic History*, I. ii. p. 167.

[3] Below, ibid., p. 1429; Ashley, ibid., pp. 90, 91.

were the customers rich or poor, influential or insignificant.[1] The hours during which work could or could not be done were specified, not only in order to place all upon the same footing and prevent one from taking advantage of another, but also because it was justly deemed that work done, for example, by artificial light would necessarily be less efficient than work done by daylight. No man was allowed to have more than a certain number of apprentices, and was thereby prevented from developing his business unduly at the expense of his weaker brethren, and in certain cases the raw material was even apportioned out amongst the various members of the crafts, and the amount fixed that each should produce.[2] The same spirit of brotherhood was to prevail in business as in social relationships, as we see instanced by the provision that a member who finds himself unable to complete work undertaken shall be assisted by his fellow-members so that he may not lose the benefit.[3]

This gives an indication of a system which must have had a cramping effect upon industry and have tended to destroy personal enterprise and initiative, but "the time had not yet come for the free play of individual enterprise. It was rather a time when elementary conceptions of good and honest work needed to be driven into the general conscience by minute rules vigorously enforced."[4] At the first it undoubtedly performed the extremely useful function of fostering and building up a trade class then in its infancy, and, by preventing any great distinction in

[1] Below, *Zünfte*, p. 1429; Roscher, *System der Volkswirtschaft*, iii. p. 802.

[2] Below, ibid., p. 1429; Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 7.

[3] Ashley, *Introduction to English Economic History*, I. i. p. 92.

[4] Ashley, ibid., ii. p. 168.

wealth and opportunity between craftsman and craftsman, not only brought about an average excellence of the product, but by raising the standard of living all round did much to establish firmly that industrial class[1] which is such an important section of our modern society. Labour was thereby placed on an honourable footing and could now claim recognition.[2]

Turning to the other side of craft gild activities, we find the same care for decayed or impoverished members that has characterised all gilds in all ages.[3] They too regarded themselves as brotherhoods in which all were equal, with mutual obligations in all

[1] Below, *Zünfte*, p. 1429; Ashley, *Introduction to English Economic History*, I. ii. p. 168. Cf. Arnold, *Studien zur deutschen Kulturgeschichte*, pp. 210 sqq.; Seligman, *Two Chapters on the Mediæval Guilds of England*, pp. 99–101.

[2] Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 359. See also Ennen, *Geschichte der Stadt Köln*, i. p. 536.

[3] Wilda, *Gildenwesen*, pp. 331, 335; Brentano, *Die Arbeitergilden der Gegenwart*, i. p. 54; Ennen, ibid., ii. p. 597; Ashley, ibid., i. pp. 91, 92; Below, ibid., p. 1428; Hibbert, *Influence and Development of English Gilds*, p. 33. For example, see the charter of the Bâle Craft Gild, 1268: Schmoller, *Die Strassburger Tucher- und Weberzunft*, p. 390. According to the statutes of the Gild of Coopers, Cologne, brethren who were lame, blind, or incapable of work received out of the common fund a pension of 8 mörchen daily: Ennen, ibid., p. 626. Thus, too, in the London ordinances of the Whittawyers (leather dressers or saddlers), 1346: "If by chance any one of the trade shall fall into poverty, whether through old age, or because he cannot labour or work, and have nothing with which to help himself; he shall have every week from the said box 7d. for his support, if he be a man of good repute. And after his decease, if he have a wife, a woman of good repute, she shall have weekly for her support 7d. from the said box, so long as she shall behave herself well, and keep single." Further: "If any one of the said trade shall depart this life, and have not wherewithal to be buried, he shall be buried at the expense of their common box."—Riley, *Memorials of London*, p. 232.

occasions of need.[1] But it was not merely that help was afforded when the member was beyond all self-help. It was recognised that there were times of difficulty and depression in trade, and the gild chest was open to those whose position could be made secure by the loan of a sum of money to tide them over the difficult period;[2] they were thus not only preserved from penury, but their business was by such means retained to them and with it their self-respect.

Cases of distress, other than those of a temporary character, were met by the setting down of a certain stipend—greater or smaller according to the financial condition of the gild—out of the funds. The distressed member might owe his position to sickness or infirmity, fire or perils of the sea or other misfortunes, or simply adverse trade experience. The gild was there, as Brentano expresses it, as the "fond mother aiding and caring for her sons in every circumstance of life."[3] On the death of a poor brother an honourable burial was provided for him,[4] and the funds of the craft gilds, therefore, performed the function of those of sickness and burial clubs.[5] Nor is it more than natural to find a

[1] Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 387; Below, *Zünfte*, pp. 1428, 1429; Herbert, *History of the Twelve Great Livery Companies*, i. pp. 40, 41. Many statutes express the main object of the association as being: "Liebe und Leid mit einander zu leiden bei der Stadt und wo es Noth geschehe": Roscher, *System der Volkswirtschaft*, iii. p. 804, note 2; thus also a document of the year 1362 of Wetzlar: "Wer mit den Schmieden Lieb' und Leid tragen wolle . . .": Wilda, *Gildenwesen*, p. 335.

[2] Hibbert, *Influence and Development of English Gilds*, pp. 33, 34; Gierke, ibid., p. 396.

[3] *Die Arbeitergilden der Gegenwart*, i. p. 54.

[4] *E.g.*, Gild of Tailors, Lincoln (founded 1328), burials for poor members "according to the rank of him who is dead"; Smith, *English Gilds*, p. 182.

[5] Gierke, ibid., p. 387.

care exercised by the gild for its members in their prosperity as well as in their distress. There were festive gatherings[1] at set times in the gild-house,[2] and manners and behaviour on such occasions were made the subject of careful regulations ;[3] in a much wider field, too, that of morals in general, the gild sought, by example and precept, by supervision and penalty, to influence for good the lives of the brethren.[4] The gild advantages extended beyond the craftsman himself merely ; for not only did the privilege of membership pass on easy terms from father to son,[5] and even the widows of craftsmen were allowed to carry on the deceased husband's business,[6] but it seems as if every member of his family was included in the benefits of the body,[7]

[1] Ashley, *Introduction to English Economic History*, I. i. p. 91.

[2] The gild-house was also the council-house of the gild. On occasion money was raised on the security of it: Schmoller, *Tucher- und Weberzunft*, p. 404.

[3] Below, *Zünfte*, p. 1428.

[4] Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 6 ; Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 365.

[5] Schmoller, ibid., pp. 389, 390, speaks of the early "tendency to regard gild law as something hereditary, and to treat every non-member more hardly than the sons of members," and instances the case of Stendal, 1233, where the son of a clothmaker and the second husband of a clothmaker's widow were admitted for 3 shillings, and strangers only for 23 shillings.

[6] Gierke, ibid., pp. 401, 402 ; Ennen, *Geschichte der Stadt Köln*, ii. p. 623.

[7] Gierke, ibid., p. 401; Brentano, *Die Arbeitergilden der Gegenwart*, i. p. 53 ; Schönberg, ibid., p. 6. In gild statutes of Bâle, 1241, we have : "In derre selbin zunft sint die vrowen als die man, dieweile ir wirte lebent und nach ir manne tode dieweile si witewen sint." According to the gild rolls of Lübeck, 1356 : "Vortmer schal sick nemandt unsers amptes underwinnen, de beruchtet is, he sy mann edder fruwe, und schall wesen echte boren." Gild rolls of the same town, 1514, lay down that the tailors shall : "under sick mit ohren frouwen und kyderen eyn ampt und eynerleye gerechticheit holden ok hebben und

without of course having any part in its administration.[1] They were members under its protection with a place at the festivals and religious services; subjects for relief in case of need during the lifetime of the breadwinner; and in the event of his death, and there being no one to step into his place, the gild still recognised the responsibility. Thus the craftsman was not only secured during his lifetime but his family was cared for after his death;[2] and it was not merely members of the family who came within the scope of this benevolent influence, but also servants, apprentices, and journeymen,[3] who were doubtless often treated as members of the family and were allowed in certain cases to continue

unvorhindert bruken und geneten": Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 401, note 207. The wife of the gild master was regarded as such an important and constituent part of the gild that it was laid down, for example, in the Lübeck gild rolls of 1414, that she too must be a reputable and worthy person: "Item we sick vorandern wil in unseme ammete, de scal nemen ene bedderve vrowen edder ene bedderve juncvrowen, de unses ammetes werdych syn": Gierke, ibid., p. 402, and note 212. It is noticeable of gilds in general that as a rule they were composed of both men and women: Smith, *English Gilds*, p. xxx. In Cologne there were two women's gilds, those of the threadmakers and the gold thread-spinners: Ennen, *Geschichte der Stadt Köln*, ii. p. 622.

[1] Hibbert, *Influence and Development of English Gilds*, p. 39; Gierke, ibid., p. 401.

[2] This is not intended to convey that the stipends were always, or even as a rule, adequate.

[3] *E.g.*, in the ordinances of the London Braelers (makers of *braels* or braces), 1355: "If any serving-man of the said trade, who has behaved himself well and loyally towards his masters whom he has served, shall fall sick, or be unable to help or maintain himself, he shall be found by the good folks of the said trade, until he shall have recovered, and be able to help and maintain himself."—Riley, *Memorials of London*, p. 277. See also Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 6; Cunningham, *Growth of English Industry and Commerce during the Early and Middle Ages*, pp. 349–53; Gierke, ibid., p. 348 (concerning the merchant gilds).

the deceased master's business.[1] Sometimes, of course—and this class of gild seems to have been more important on the Continent than in this country[2]—these had associations of their own, with a common chest and common benefits.[3]

As to the question of the disappearance of the craft gilds,[4] we find that, though they actually continued for very much longer, yet a decline in efficiency and power began to be obvious after about the fifteenth century, the reasons for which are not far to seek. All economic institutions depend, in the nature of things, for their existence upon the larger economic circumstances of national progress, and as soon as markets began to broaden and the clear demarcation between town and country became blurred and indistinct, a great barrier in the way of the dissolution of the craft gilds was removed. With the growth of capitalism

[1] Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 402 sqq.

[2] Ashley, *Introduction to English Economic History*, I. ii. p. 124. Ashley gives a list of journeymen associations in England, starting from towards the end of the fourteenth century: ibid., pp. 123, 124.

[3] Webb, *History of Trade Unionism*, note 1 of p. 4 (on p. 5); Seligmann, *Two Chapters on the Mediæval Guilds of England*, pp. 91 sqq.; Ashley, ibid., p. 123. The following clauses from the statutes of the Merchant Tailors' Guild, Bristol, dated 1570, are interesting: "(1) Imprimis that the wardens of the journeymen doe waren all the jornye men to come to the Halle and there to pay theyr quarteredge to the wardens for that tyme, the Monday before the quarter daye. (4) Item, that the mony that is geathered every quarter by the wardens be put into the chest in the preasance of all the jornye men to be keapt for those yt be sick or aged or fallen into poverty by the hand of God": ibid., p. 180, note 162*a*. So Wilda refers to the Gild of Journeymen Bakers, Copenhagen, 1403, with their provisions for mutual support in adversity, care of their sick, and attendance at the burial of deceased members: *Gildenwesen*, pp. 342, 343.

[4] Gierke, ibid., p. 358; Schönberg, *Zur wirtschaftlichen Bedeutung des deutschen Zunftwesens*, p. 6. Cf. Ashley, ibid., p. 158.

in industry [1] and the more modern organisation of business in the hands of a few wealthy men, the number of small independent craftsmen became ever smaller and smaller, and ultimately their associations were either extinguished entirely or only continued to exist in altered forms.[2]

It is interesting to notice in passing that the statutes of Henry VIII. and Edward VI.,[3] which

[1] See Lamprecht, *Deutsche Geschichte*, iii. pp. 24, 25.

[2] Ashley, *Introduction to English Economic History*, I. ii. p. 169. Cf. Arnold, *Studien zur deutschen Kulturgeschichte*, p. 229. There appears to be no historical ground for making Trade Unions the offspring of the craft gilds: Webb, *History of Trade Unionism*, pp. 13, 14; Gross, *Gild Merchant*, i. p. 176.

[3] 37 Henry VIII. c. iv., entitled "an acte for dissolucion of colleges, ch[a]untries, and free chapelles, at the king's majestie's pleasure"; 1 Edward VI. c. xiv., entitled "an acte whereby certaine ch[a]untries, colleges, free chapells, and the possessions of the same be given to the king's ma[tie]," and which included "all payments by corporations, misteryes or craftes, for priests' obits and lamps." The framers of the act considered "that a greate pte of superstition and errour in Christian religion hath byn brought into the myndes and estimacons of men, by the devising and phantasinge vaine opynions of purgatorye and masses satisfactorye, to be done for them which be departed; the which doctrine and vaine opynion by nothing more is mayntayneet and upholden than by the abuse of treatalls, ch[a]untries, and other provysions made for the contynuance of the saide blyndnesse and ignoraunces. . . ." The Companies had no option but to buy back from Edward VI. these chantry rents which they did at a cost of £18,700 according to Strype, the rents being then put to good use. The following transaction of the Grocers is typical of the others:—

	£	s.	d.
"They purchased of the King in rente	86	08	00
They sould tenements to buy the same per annum	65	02	04
Payments yerelie out of the rents purchased:—			
In pensions to poore decaied brethren ...	30	00	00
In exhibitions to schollers	15	06	08
Towards the maintenance of a schole ...	10	00	00
In almes to poore men & women	50	00	00
Sum of the yerelie payments	105	06	08"

—Herbert, *History of the Twelve Great Livery Companies*, i. pp. 113 sqq.

are often credited with the total destruction of the gilds as such, only forfeited that portion of their funds which was devoted to religious usages, such as the provision of lights and obits and the maintaining of priests. They did not touch moneys employed in supporting distressed members, in educating their children, in providing allowances for their widows, and kindred uses.[1]

The only part of the craft gild institution which has survived unto the present day[2] is to be seen in those London gilds known as the "Livery Companies." We have noticed that, at the beginning, the bodies of craftsmen had to buy their privileges by certain payments, generally demanded annually, but later it became common to grant charters which secured their privileges to the craft gilds without the necessity of buying the renewal of them from year to year. The practice first came into operation in the reign of Edward III.[3]

Following upon this, a distinction soon began to be apparent between the larger and wealthier associations and their less prosperous contemporaries, and it was at this period that the twelve great Companies were evolved. The fact that they

[1] Ashley, *Introduction to English Economic History*, I. ii. pp. 154, 155; Bateson, *Cambridge Gild Records*, preface by Cunningham, p. viii. Cf. Herbert, *History of the Twelve Great Livery Companies*, i., pp. 113 sqq. Toulmin Smith was perhaps under a misapprehension of this kind when he spoke of there being than this "no more gross case of wanton plunder to be found in history of all Europe. No page so black in English history": *English Gilds*, p. xlii, note 1, and see p. xliii. Cf. however Cunningham, *Growth of English Industry and Commerce during the Early and Middle Ages*, pp. 522, 523.

[2] Ditchfield, *City Companies*, describes their good works, and is a defence of their present position: see, *e.g.*, pp. 14, 346.

[3] Stubbs, *Constitutional History of England*, iii. p. 585; Ditchfield, ibid., p. 3; Herbert, ibid., pp. 28, 40.

took advantage of the licence reserved to them in the statutes passed against livery and conferred a distinctive dress upon their full members, gave them their designation.[1]

The twelve Companies were those of the mercers, grocers, drapers, fishmongers, goldsmiths, skinners, merchant tailors, haberdashers, salters, ironmongers, vintners, and cloth-workers,[2] and as in them are well illustrated those features of social activity[3] which we have found to be common to the craft gild as an institution, it is worth noting some of their regulations bearing on this side of their functions—needless to say, the only side that remains.

The charter of the Mercers commenced in the following terms: "In consideration that several men of the mystery of mercery of the City of London often, by misfortunes of the sea and other unfortunate casualties, have become so impoverished and destitute that they have little or nothing in consequence to subsist on unless from the alms and assistance of the faithful. . . ."[4]

The Goldsmiths' charter states that "many persons of that trade, by fire and the smoke of quicksilver, had lost their sight, and that others of them by working in that trade, became so crazed and infirm that they were disabled to subsist

[1] Stubbs, *Constitutional History of England*, iii. pp. 585, 586; Herbert, *History of the Twelve Great Livery Companies*, i. pp. 28, 36, 37. Cf. Smith, *English Gilds*, pp. xxxviii, xxxix.

[2] Herbert, ibid., see table between pp. 224, 225, with the dates of the various charters.

[3] Ditchfield, *City Companies*, p. 4: "Legacies were also bequeathed to the companies for the same object, and thus we find them in the fourteenth century administering large charities for the benefit of the poor of London, and, with the help of the monasteries, providing a system of relief and educational organisation in the absence of any poor-law administration or State education."

[4] Ditchfield, ibid., p. 3.

but of relief from others, and that divers of the said City, compassionating the condition of such, were disposed to give and grant divers tenements and rents in the said City to the value of twenty pounds per annum to the Company of the said Craft towards the maintenance of the said blind, weak and infirm." [1]

The Fishmongers' Company was given powers to hold land "for the sustentation of the poor men and women of the said commonalty . . ." [2] and their ordinances of 1499 recite that quarterage was to be "gadderyd of every persone fre of the crafte, towardes the reliefe and sustentacon of the nedy people of the saide crafte decayed and fallen in poverte, and towards their charges and expences thereafter to be borne by the said fellowship": viz., 16d., "in four sums of 4d. each quarter; 8d. fine to be paid for every default." [3]

The first ordinances of the Grocers (1346) required that each new member "should be of good condition, and of the Craft, and that he should pay 13/4d. entrance, or the value thereof." [4]

The rules of the Company provided that any such becoming poor from "adventures on the sea, or by the advanced price of merchandise, or by borrowing and pledging, or by any other misfortunes might be assisted out of the common money, according to his situation (if he could not do without), when they were able to maintain him or them by the said money." [5]

According to the ordinances of the Drapers' Company (6 Henry IV.) the question of "those

[1] Ditchfield, *City Companies*, pp. 3, 4.
[2] Ditchfield, ibid., p. 3.
[3] Herbert, *History of the Twelve Great Livery Companies*, ii. p. 37.
[4] Herbert, ibid., i. p. 45.
[5] Herbert, ibid., i. p. 49.

fallen in poverty" was dealt with in an article which sets out that in the event of any brother, who had been in livery one year and was of good reputation, falling into poverty or sickness, he should by the whole body be admitted to alms. If he had never served as warden he was to receive four marks a year, to be paid quarterly, otherwise 14d. per week from the funds, "till the tyme that wyll encrese them odir wyse."[1]

Early in their history the Companies built dwellings near to their halls for the permanent accommodation of those who had fallen hopelessly into want, and from these developed their almshouses which have played so prominent a part in London's charities.[2]

We find in 1503 the following addition to the ordinances of the Drapers' Company, which had built almshouses: "Provided always that the poor so admitted shall dwell within the place, and use him always as an almonesman, and that such stuff as he shall bring with him and leve after his death, shall rest in the house of his successor, after the discretion of this place, except he have wife or child, in which case, they to receive his goods, and to immediately avoid the place."[3]

[1] Herbert, *History of the Twelve Great Livery Companies*, i. p. 428.

[2] Herbert, ibid., pp. 49, 50; Ashley, *Introduction to English Economic History*, I. ii. pp. 325, 326. Admitting an impoverished brother into one of the almshouses used to be known as "giving a charity" or giving the "charite of the house": Herbert, ibid., p. 428.

[3] Herbert, ibid., p. 428. An interesting case of relief granted a quarter of a century or so later is recorded (ibid.). Sir Laurence Aylmer, a member of the Drapers, who had served as Master on more than one occasion, and had in addition been Sheriff and Lord Mayor of London, fell into absolute want and applied to the Company. As an instance of their generosity the case is a disappointing one, even taking into account the alteration in the value of money

There were, further, very careful provisions in connection with the last rites to be paid to departed members. In the Grocers' ordinances of 1463 is recited[1] that "at the death of a member of the brotherhood in London, the warden for the year should order the beadle to warn the brothers to go to the dirge, and on the morrow to the masse, under pain of viiis." In the case of the death of a brother outside London, the same duty was imposed on other members on the spot, and if no adequate provision had been made for burial, "then it to be done of the common goods, for the honor of the society."

There is the following naïve addition to the ordinances: "And when any one of the fraternity makes his will, he may, according to his circumstances and free will, devise what he chuses to the common box, for the better supporting of the fraternity and their alms."

since those days, and the relief was not even granted in a very pleasing or courteous manner, as the following entry shows: "Geven to Sir Lawrans Aylm^{r}, towards his releeve, ij^{s} and iiij^{d} of the charite of this hous, vnto suche tyme as God shall other wyse p^{r}vide for hym. The first day of payment shall be Saterday, the xxiiij. day of October next ensuing. And furthermore, it is agreed that if the said Sir Lawrans, at any tyme hereaft^{r}, be not co'tent w^{h} the foreseid charite, or make any sute for any more, that then the foreseid g^{r}nt vtterly to be voyd and of none effect." We can only hope this was an exceptional case.

[1] Herbert, *History of the Twelve Great Livery Companies*, i. p. 70.

CHAPTER X

SOCIAL-RELIGIOUS AND RELIGIOUS GILDS

WHAT may be termed social-religious gilds[1] played in the Middle Ages a prominent part in English social life.[2] So numerous were they that we hear of as many as from half a dozen to a dozen in single parishes in Somerset,[3] and there is no reason for regarding this county as exceptional. They

[1] In the year 1388 two Parliaments were held. In the second it was ordered that every sheriff in England should have two writs sent him, both instructing him to make public proclamation throughout the shire, the first calling upon the "Masters and Wardens of all Gilds and Brotherhoods" to furnish the King's Council in Chancery with particulars of the foundation, statutes, and property of their Gilds; the second calling upon the "Masters and Wardens and Overlookers of all the Mysteries and Crafts" to furnish copies of their Charters or Letters Patent, where they had such: Smith, *English Gilds*, pp. xxiv, xxv. Of these returns many must have been lost, but there are some hundreds remaining in the Public Record Office, and the industry of Toulmin Smith has placed the contents of many of them at our disposal. For a study of the subject they are invaluable.

[2] We are not much concerned here with the connection some of them may have had with the burghal government, and public duties they may have fulfilled, such as the care of bridges, highways, and town walls. In 1515 there was a "Gilde-Halle in Bury wherein the bredryn of the Candelmesse gilde kepe the mony that longith to the town of Bury": Gross, *Gild Merchant*, i. note 11 of p. 83.

[3] Ashley, *Introduction to English Economic History*, I. ii. p. 138.

existed on the Continent, too, in large numbers—in the town of Cologne, for example, there were eighty, in Lübeck seventy, and in Hamburg over a hundred.[1]

Whether their primary object was a social or a religious one is a question with which we need not concern ourselves, though it might be suggested in passing that the difficulty has arisen owing to a different use of the same terms. Professor Ashley,[2] for example, disagrees with the view expressed by Toulmin Smith[3] that the gilds, whilst providing for religious observances, were really lay bodies existing for social objects, and quotes Brentano apparently to support his contention that they were essentially religious in their nature.[4] The latter, however, whilst he certainly attributes the moving force of the gilds to "Christian charity,"[5] is at special pains to make clear that he is in agreement with Smith as to the objects of the gilds being social ones.[6] His reason for adhering to the term "religious gilds" is that "the exercise of these very social duties . . . was considered, in the time when these gilds existed, as

[1] Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 238. It is interesting to notice three gilds (speaking generally, for objects of good fellowship) composed of Germans residing and trading in London: Walford, *Gilds*, pp. 170, 171.

[2] *Introduction to English Economic History*, I. ii. pp. 137, 138.

[3] *English Gilds*, pp. xxviii, xxix.

[4] Ashley, ibid., p. 182, note 210.

[5] Brentano, *History and Development of Gilds*, in Smith, ibid., p. lxxxvi. The Gild of Garlekhith, London (founded 1375), was begun, as its ordinances state, "to noriche more loue": Smith, ibid., p. 3; the Gild of St. John Baptist, York, gave as its first charge to "cherish brotherly love": ibid., p. 146.

[6] Brentano, ibid., p. lviii. Cf. p. lix: "Certainly the main *objects* of these Gilds we should to-day call 'social.'"

an 'exercise of religion' . . . the practice of the religious maxim, 'Love thy neighbour as thyself."[1]

In looking through the statutes of these gilds one cannot fail to be impressed by the comprehensiveness of the "social" support which they rendered.[2] Though at the present day the number of contingencies against which it is not possible to insure is becoming ever smaller, the gilds "even rendered assistance to a brother or sister in misfortunes which could now be lightened only by an appeal to private friendship or to public sympathy."[3] In many cases they seem to have been institutions affording assistance in adversity of any nature whatever,[4] whilst in most the wording of the ordinances was sufficiently wide to cover a very extended ground. As a rule they were composed of both men and women, and even where the latter were excluded from actual membership it did not follow that they were outside the benefits of the society.[5]

[1] Brentano, *History and Development of Gilds*, in Smith, *English Gilds*, p. lviii. Hasbach, *Das Englische Arbeiterversicherungswesen*, p. 23, also takes the view that the "good works" were merely part of a religious observance.

[2] The gild idea, according to Wilda, "expresses itself in a multiplicity of ways in measures of mutual assistance and relief, in which is the real essence of the system": *Gildenwesen*, p. 28; see also pp. 32, 33; and Walford, *Gilds*, p. 6. For a proposal for a "Pension-Office" somewhat in the manner of the gilds in this respect, see Defoe, *Essay upon Projects*, pp. 91–100.

[3] Pike, *History of Crime*, i. p. 382.

[4] *E.g.*, the Poor Men's Gild, Norwich (begun 1380), provided for help in sickness or poverty "or any other mischief": Smith, ibid., p. 40. Similarly, Gild of the Purification, Lynn, Norfolk; Gild of St. James, North Lynn, Norfolk; Gild of St. John Baptist, Oxeburgh, Norfolk: ibid., pp. 64, 104, 122.

[5] *E.g.*, Gild of Holy Trinity, Cambridge (begun 1377 or prior). There were no female members, but the wife was to have the same assistance in case of need after the death of the husband "so long as she does rightly and is not remarried": Smith, ibid., p. 267. The same was the case in other Cambridge gilds: ibid., p. 263, note.

Admission would appear to have been easy, subject, of course, to the various dues of which notice has been taken, but at the same time there were regulations as to those whose character was not all that might be desired, either to prevent their entry[1] or to make provision for their expulsion after entry if necessary.[2]

In comparing these gilds with modern institutions for self-help, perhaps the thing which strikes one most is that there seems to have been no question here of "indemnity" in the exacter sense in which we now understand it. As a rule the happening of a given eventuality such as fire, shipwreck, or the attainment of a certain age, did not carry with it of necessity a certain stipend from the society. Any one of these might occur, but unless it brought with it, in the case of the member, not merely the loss of a portion of his goods or incapacity for further labour, but actual need (as it probably would in almost every case), he had no claim on his brethren. In the main, that is to say, the gild did not regard the definite and measurable loss sustained by fire or shipwreck as the "risk" insured against, but poverty arising from such a contingency,[3] sometimes from all or any such—"any

[1] *E.g.*, St. Katherine's Gild, Coventry (founded in the reign of Edward III.). No one notorious for "felony, homicide, lechery, gaming, sorcery, or heresy" was to be admitted: Dugdale, *Antiquities of Warwickshire*, p. 122.

[2] *E.g.*, Gild of the Blessed Virgin Mary, Hull (founded 1357), where there were very full regulations: Smith, *English Gilds*, p. 158. See also St. Katherine's Gild (note 1 above).

[3] In the ordinances of the Gild of Kyllyngholm, Lincolnshire (begun 1310), are the following provisions: "If a brother or a sister is unlucky enough to lose a beast worth half a mark, every brother and every sister shall give a halfpenny towards getting another beast. If the house of any brother or sister is burnt by mishap, every brother and every sister shall give a halfpenny towards a new house. Moreover, if the house of any brother or sister is broken into

mischief," as we have already seen it expressed. There is a striking contrast between this attitude and the intense specialisation in the branches of insurance to-day; and so pronounced does the principle appear to have been that the gild ordinances frequently stipulate that the member shall have been actually "brought to nothing" in order to qualify for relief." [1]

As a rule, the members of the gild seem to have accepted responsibility for the fixed amount for each of their number who might be in misfortune, but there are instances where, in the event of more

by robbers, and goods carried off worth half a mark, every brother and every sister shall give a halfpenny to help him:" Smith, *English Gilds*, p. 185. Here, for example, there is certainly no expression of the limitation referred to, but losses such as those mentioned above would without doubt be so serious to the class of members forming a gild of this nature as to involve actual want in many instances. In the Gild of the Blessed Mary, Chesterfield (begun 1218), for similar misfortunes there was a graduation according to need: "Each brother shall give him, in relief of his loss, at the first, twopence; and again, if *he needs* it, twopence more; and yet a third time, if *necessary*, iid.": ibid., p. 166.

[1] *E.g.*, George's Gild, Warwickshire: "In case any of the brethren or sisters come to grief by which they are brought to nothing . . .": Leach, *History of Warwick School*, p. 98; Gild of Garlekhith, London (begun 1375): "If any of the aforesaid brotherhood fall in such mischief that he hath nought . . .": Smith, ibid., p. 5; Gild of Sts. Fabian and Sebastian, Aldersgate, London: "If it so befall . . . that it may be taken that he hath nought of his own to help himself with": ibid., p. 9; the Poor Men's Gild, Norwich (begun 1380): "If . . . he may not help himself with his own goods, and . . . have nought to sustain himself": ibid., p. 40. An interesting example of aid from quite a different standpoint occurs, however, in the statutes of the Gild of the Palmers, Ludlow (ordinances of 1284): "If any good girl of the gild of marriageable age, cannot have the means found by her father, either to go into a religious house or to marry, whichever she wishes to do; friendly and right help shall be given her, out of our means and our common chest, towards enabling her to do whichever of the two she wishes": ibid., p. 194.

than one requiring relief at the same time, the sum receivable by each was reduced.[1]

Turning to the actual statutes and looking first at the religious side of the gilds,[2] which had their own patron saints after whom they were very often named, we find provisions for lights and sometimes even for chaplains,[3] regulations for attendance at burial services and masses held for the dead, for the saying of prayers for the soul of the dead and other ordinances in connection therewith, with penalties for non-compliance.[4] There were also periodical gatherings for religious purposes,[5] as also for mutual social intercourse and festivity, though even the feasts themselves were influenced by this religious spirit.[6]

[1] *E.g.*, Gild of St. Clement, Cambridge (ordinances of the fifteenth century), of which the distressed member was to have 4d. weekly, but in the event of there being more than one such, the 4d. was to be divided among them all: Smith, *English Gilds*, pp. 278, 279 (this was also the case with two other Cambridge gilds, see ibid., pp. 272, 273); Gild of the Blessed Virgin Mary (St. Botulph's), Cambridge (founded prior to 1389), which gave relief of 7d. weekly and a new gown every year, but if two were in want at the same time, each 4d. weekly and a gown: ibid., pp. 269, 270.

[2] The care of prayers for the soul was sometimes entrusted rather to the gild than to an ecclesiastical body: Smith, ibid., p. 325, note.

[3] *E.g.*, Gild of the Holy Trinity and St. Leonard, Lancaster (founded 1377), where there was provision for two chaplains: Smith, ibid., p. 164. Cf. Gild of the Blessed Virgin Mary (Juxta Fforum), Cambridge (begun 1385 or prior). A chaplain was to be provided, but when the funds of the gild fell below a certain sum the amount at their disposal was to be bestowed on the maintenance of a light and on the poor brethren: ibid., p. 271.

[4] *E.g.*, Gild of the Holy Trinity and St. Leonard, Lancaster (founded 1377): Smith, ibid., pp. 163, 164.

[5] *E.g.*, Fraternitas Sancte Trinitatis, Norwich (begun 1364): Smith, ibid., p. 25.

[6] See Gild of the Nativity of St. John Baptist, Lynn, Norfolk (begun 1316): Smith, ibid., pp. 71, 72.

The provisions as to help to be given to members making a pilgrimage partake both of the nature of a religious observance and of a measure of mutual assistance. Sometimes the framers of the ordinances seem to have been actuated mainly by the one aspect, sometimes by the other.[1]

Coming back to the question of support given to those in want, we may notice in passing the cases of loans pure and simple made to brethren out of gild stock on security or pledge,[2] of help to be given to members to defend themselves at law,[3] and of assistance in the event of wrongful imprisonment.[4] Indeed, in one place and another we find mention of almost every fortuitous circumstance

[1] In the case of the Gild of the Blessed Virgin Mary, Hull (founded 1357), the pilgrim, whilst away, was to be released from his subscriptions "in order that all the gild shall share in his pilgrimage": Smith, *English Gilds*, p. 157. Cf. Gild of the Resurrection of our Lord, Lincoln (founded 1374): ibid., p. 177; Gild of St. Benedict, Lincoln: ibid., p. 172.

[2] *E.g.*, Gild of St. Katherine, Aldersgate, London: Smith, ibid., pp. 7, 8; Gild of Sts. Fabian and Sebastian, Aldersgate, London: ibid., p. 11. Cf. St. Katherine's Gild, Coventry (founded in the reign of Edward III.). If a member suffered from fire, water, robbery, or other calamity, a sum of money was to be lent him by the gild without interest: Dugdale, *Antiquities of Warwickshire*, p. 122.

[3] *E.g.*, Gild of the Blessed Mary, Chesterfield (founded 1218): Smith, ibid., p. 166.

[4] Here also, however, the principle that the case must be one of want reveals itself to some extent at any rate—*e.g.*, Gild of Garlekhith, London (begun 1375). If a member should be "imprisoned falsely by enemy, or by false conspiracy, *and have nought* for to find him with . . . he shall have xiiid. during his imprisonment, every week": Smith, ibid., p. 5. Cf. Gild of the Palmers, Ludlow (ordinances of 1284): "If it befall that any brother or sister be cast into prison . . . or that a man or his goods be in any way unrightly seized . . . our Rector and Stewards shall, without delay, use every means in their power to get him and his goods freed": ibid., pp. 193, 194; Gild of St. Leonard, Lynn, Norfolk: prisoners, apparently rightfully or wrongfully, were to be visited and comforted: ibid., p. 50.

which could result in pecuniary disaster to a member.

First—a provision which to some extent reflects the religious aspect of the societies—the gild undertook the burial of the brother whose goods, at his death, were inadequate to defray the expenses.[1] But during his lifetime he might be overtaken by poverty as the result of sickness, or old age, or infirmity—doubtless the most common cases[2]—or the cause might be inability to procure work;[3] he might become blind or maimed, deaf or dumb, be smitten with leprosy or some other incurable disorder;[4] he might lose his property through fire, water,[5] or robbery,[6] murrain among his live stock,[7]

[1] *E.g.*, Gild of the Holy Trinity and Gild of St. Peter, Wygnale, Norfolk. In addition the former contains a provision that drowned members, the latter that those dying suddenly by land or water, are to be searched for by the gild: Smith, *English Gilds*, pp. 110, 117. The Gild of Cranbone, Wygnale (begun 1387), appears to have made no stipulation as to ability or otherwise to pay: ibid., p. 115.

[2] Examples of so common an instance are hardly necessary.

[3] *E.g.*, Gild of the Blessed Virgin Mary, Hull (founded 1357): in the case of a member, young and able to work, ten shillings was to be advanced to enable him to follow his calling, and if through no fault of his own he was unable to make repayment by the end of three years, the debt was to be cancelled: Smith, ibid., pp. 156, 157. Cf. Gild of Sts. Fabian and Sebastian, Aldersgate, London, see below, p. 145, note 1.

[4] *E.g.*, Gild of the Palmers, Ludlow (ordinances of 1284): Smith, ibid., p. 194; Gild of the Blessed Mary, Chesterfield (founded 1218): ibid., p. 166; Gild of the Blessed Virgin Mary, Hull (founded 1357): ibid., p. 157. At one time there were close on 100 leper-houses in England.

[5] *E.g.*, Gild of St. Katherine, Aldersgate, London: Smith, ibid., pp. 6, 7; Gild of St. Thomas of Canterbury, Lynn, Norfolk (begun 1376): ibid., p. 48.

[6] *E.g.*, St. Katherine's Gild, Coventry (founded in the reign of Edward III.): Eden, *State of the Poor*, i. p. 595; Gild of Corpus Christi, Coventry (founded 1348 or prior): Smith, ibid., p. 232.

[7] *E.g.*, Gild of the Blessed Mary, Chesterfield (founded 1218): Smith, ibid., p. 166.

or the fall of his house,[1] or some like calamity—the gilds were present to help him to bear the burden of his need.

Though it is usual to find some definite scale of relief, the manner in which this was fixed, as well as the amount of it, varied greatly between gild and gild. Probably the most common method was to provide for so much to be paid weekly[2]—less frequently daily[3] or yearly[4]—out of the funds of the gild to the distressed member. But there was the also common alternative whereby, on the need arising, the members each paid a certain sum—weekly,[5] yearly,[6] or at each "mornspeche,"[7] as the

[1] *E.g.*, Gild of the Palmers, Ludlow (ordinances of 1284): Smith, *English Gilds*, p. 193.

[2] *E.g.*, Poor Men's Gild, Norwich (begun 1380), 3d.: Smith, ibid., pp. 40, 41; Gild of St. James, North Lynn, Norfolk, 4d.: ibid., p. 104; Gild of Holy Trinity, Cambridge (begun 1377 or prior), 7d.: ibid., p. 267; Gild of St. George, Norwich (begun 1385), 8d.: ibid., p. 18; Fraternitas Sancti Christofori, Norwich (begun 1384), 12d.: ibid., p. 24; Gild of St. Katherine, Aldersgate, London, 14d.: ibid., pp. 6, 7. Sometimes in addition to the weekly payment there was a special contribution at some date or other of the year. *E.g.*, Gild of Holy Trinity, Hull (founded 1369), at the Feast of St. Martin a tunic and a little cap: Walford, *Gilds*, pp. 250, 251; Gild of the Blessed Virgin Mary (St. Botulph's), Cambridge (founded prior to 1389), a new gown every year: Smith, ibid., pp. 269, 270.

[3] *E.g.*, Gild of St. John Baptist, Oxeburgh, Norfolk (begun 1307), ¼d. (Sundays ½d.): Smith, ibid., p. 122.

[4] *E.g.*, Gild of Fullers of Lincoln (founded 1297), 6s.: Smith, ibid., p. 181. Smith assumes the 6d. mentioned in the document to be merely a copyist's error.

[5] *E.g.*, Gild of St. Botulph, Norwich (begun 1384), ¼d.: Smith, ibid., p. 16; Fraternitas Sancti Christofori, Norwich (begun 1384), ½d.; here the amount to be handed to the member is limited to 12d.: ibid., p. 24. Writing as late as the end of the eighteenth century, Sir F. M. Eden refers to a society in existence at Galston, Ayrshire, in which this procedure was followed. It consisted of about 50 members, and when a brother fell sick 1d. or ½d. was to be paid to him weekly by each, according as he was confined to bed or able to get about, but not to work: *State of the Poor*, i. p. 600, note 2.

[For notes 6 and 7 see next page.

case might be—to meet it. Occasionally assistance was to be rendered daily, by the others in turn, direct to the brother requiring it.[1]

The Reformation saw the end of the social-religious gilds, both in England and on the Continent.[2] Reference has already been made to the terms of the Acts of Henry VIII. and Edward VI., and their discrimination between property devoted to secular and religious ends. Professor Ashley argues from this that as the relief was as a rule furnished from contributions and not from endowments, there was no deprivation, such as has been so often assumed, as far as the amelioration of distress was concerned. The legislation led at most to "the dissolution of the fraternities, and the consequent discontinuance of this particular form of almsgiving."[3] Of the use of the latter term we shall speak hereafter. Upon a discussion as to the fairness of the Commissioners in enforcing the Acts, on which so much rests, and to which we have not

[1] *E.g.*, Gild of St. Michael on the Hill, Lincoln (founded 1350), 1d.: Smith, *English Gilds*, p. 179. Cf. Gild of the Blessed Mary, Chesterfield (founded 1218), see below, p. 145, note 1.

[2] Brentano, *History and Development of Gilds*, in Smith, ibid., p. xc; Hasbach, *Das Englische Arbeiterversicherungswesen*, p. 23; Wilda, *Gildenwesen*, pp. 61, 371, 372, and see p. 375 in regard to the existence of gilds after the Reformation.

[3] Ashley, *Introduction to English Economic History*, I. ii. p. 328.

Continuation of notes from previous page.]

[6] *E.g.*, Gild of St. Anthony, Lynn, Norfolk, 1d.: Smith, ibid., p. 46; Gild of the Resurrection of our Lord, Lincoln (founded 1374), 2d.: ibid., p. 176; Gild of the Purification, Lynn, Norfolk, 4d.: ibid., p. 64.

[7] *I.e.*, the meeting of the gild, held in the morning. *E.g.*, Gild of St. George the Martyr, Lynn, Norfolk (begun 1376), ½d. four times yearly: Smith, ibid., p. 75; Gild of the Nativity of St. John the Baptist, Lynn, Norfolk, 1d. three times yearly: ibid., pp. 58, 59; Gild of St. Mary, Lynn, Norfolk, 1d. four times yearly: ibid., pp. 65, 66.

referred in speaking of the craft gilds, we cannot here enter.[1] But Professor Ashley's own words indicate the very evil which indirectly resulted. It was not the loss of the lands and endowments, but just this breaking up of the organisation which had helped men at any rate to tide over difficult times,[2] an organisation which at that day there was nothing to replace.

There was also a class of religious gilds,[3] the

[1] See Cunningham, *Growth of English Industry and Commerce during the Early and Middle Ages*, p. 522.

[2] Cunningham, ibid., pp. 539, 540.

[3] Gierke, *Das deutsche Genossenschaftsrecht*, i. pp. 238, 239; Wilda, *Gildenwesen*, pp. 36 sqq.; Walford, *Gilds*, pp. 16, 17, and *Insurance Cyclopædia*, v. pp. 345, 346; Seligman, *Two Chapters on the Mediæval Guilds of England*, pp. 10, 11. The question of their origin is involved in the history of the origin of gilds in general, but we may notice the interesting records of four Anglo-Saxon gilds. These records date from the eleventh century (Gross, *Gild Merchant*, i. pp. 181, 182; Gebauer, *Sogenannte Lebensversicherung*, p. 48; Stubbs, *Constitutional History of England*, i. p. 448):—

1. Orky's Gild at Abbotsbury (see Thorpe, *Diplomatarium Anglicum ævi Saxonici*, pp. 605–8): "Here is made known, in this writing, that Orky [Anglo-Saxon, Orcy] has given the Guildhall and the stead at Abbotsbury to the praise of God and St. Peter, and for the guildship to possess now and henceforth, of him and his consort in long remembrance. Whoso shall avert this, let him account with God at the great doom. Now these are the Covenants which Orky and the guildbrothers at Abbotsbury have chosen, to the praise of God and the honour of St. Peter, and for their souls' need. That is first: Three nights before St. Peter's mass, from every guildbrother one penny, or one pennyworth of wax, whichever be most needed in the monastery; and on the mass-eve, from every two guildbrothers, one broad loaf, well besprinkled and well 'gesyfled' [Kemble, *Saxons in England*, i. p. 511: "well sifted and well raised"; Hartwig, *Untersuchungen über die ersten Anfänge des Gildewesens*, p. 140, note 3], for our common alms; and five weeks before Peter's mass-day, let each guildbrother contribute one guild-sester full of clean wheat, and let that be rendered within two days, on pain of forfeiting the entrance, that is, three sesters of wheat. And let the wood be rendered within three days

"Gilds of the Kalenders," which confined their membership, it would seem, at any rate at the beginning, to the clergy. We hear of these, or fraternities similar to them, in very early times on

after the corn-contribution, from every regular guildbrother one burthen of wood, and two from the non-regular, or let him pay one guild-sester of corn. And whoso undertakes a charge, and does it not satisfactorily, let him be liable in his entrance-fee, and let there be no remission. And let the guildbrother who insults another within the guild, with serious intent, make atonement to all the society, to the amount of his entrance, and afterwards to the man whom he insulted, as he may settle it; and if he will not submit to compensation, let him forfeit the fellowship, and every other guildship ["and every other advantage of the guild": Kemble, *Saxons in England*, i. p. 512]. And let him who introduces more men [*i.e.*, guests to the gild-feast: Kemble, ibid.; Stubbs, *Constitutional History of England*, i. p. 448] then he ought, without leave of the steward and the purveyors, pay [*i.e.*, "forfeit": Kemble, ibid.] his entrance. And if death befall any one in our society, let each guildbrother contribute one penny at the corpse for the soul, or pay according to three guildbrothers. And if any one of us be sick within sixty miles, then we shall find fifteen men who will fetch him; and if he be dead, thirty; and they shall bring him to the place which he desired in his life. And if he die in the vicinity, let the steward have warning to what place the corpse is to go, and let the steward then warn the guildbrothers, as many as ever he can ride to or send to, that they may come thereto, and worthily attend the corpse, and convey it to the monastery, and earnestly pray for the soul. That will rightly be called a guildship, which we thus do, and it will beseem it is well both before God and before the world; for we know not which of us shall soonest depart hence. Now we believe, through God's support, that this aforesaid agreement will benefit us all, if we rightly hold it."

2. Gild at Woodbury (Thorpe, *Diplomatarium Anglicum ævi Saxonici*, pp. 608, 609): "In the name of Christ and St. Peter the Apostle, a guildship is gathered at Woodbury land; and the bishop Osbern [Bishop of Exeter, 1072–1103] and the canons within St. Peter's Monastery at Exeter have adopted the same Society in fellowship along with the other brethren. They will now, as an acknowledgment, pay to the canons yearly, for every hearth, one penny at Easter: and also for every departed

the Continent as well as in Anglo-Saxon England. Originating probably from the custom of the clergy of certain dioceses to meet at stated intervals to discuss matters of mutual interest as well as

guildbrother, for every hearth, one penny as soul-shot, be it a man or be it a woman who belongs to the guildship. And the canons are to have the soul-shot, and perform such service for them as they ought to perform."

3. Further Gild at Woodbury (Thorpe, *Diplomatarium Anglicum ævi Saxonici*, p. 609): "In Woodbury land there is also another guildship gathered to Christ and St. Peter; and they pay at Martinmas, from every hearth, one penny to St. Peter's Monastery, for the canons, and also every soul-shot, for every hearth one penny."

4. Gild at Exeter (Thorpe, ibid., pp. 613, 614): "This association is associated at Exeter, for the love of God, and for our souls' need, both as to our life's prosperity, and also to the latter days, which we desire for ourselves to be at God's doom. Now we have declared that our meeting be thrice in the twelve months, one at St. Michael's mass, the second time at St. Mary's mass, after Midwinter, the third time on Allhallows mass-day, after Easter. And let each guildbrother have [Eden gives "contribute at each meeting": *State of the Poor*, i. p. 593] two sesters of malt, and every follower ["cniht": Gross, *Gild Merchant*, i. p. 183] one and a 'sceat' of honey [*i.e.* for preparing mead: Wilda, *Gildenwesen*, p. 118]; and, at each meeting, let the mass-priest always sing two masses, one for living friends, one for those departed; and every brother of common condition two psalters of psalms, one for living friends, one for those departed. And after a death, each man six masses, or six psalters of psalms; and at a death [Stubbs, *Constitutional History of England*, i. p. 449. Eden gives "when any member is about to go abroad": ibid.; Coote, "at each expedition ordered by the king": *Romans of Britain*, p. 408], each man five pence. And at a house-burning, each man a penny. And if any man neglect the day of meeting, for the first time three masses, for the second time five, for the third time let him have no excuse, unless it be for sickness or for his lord's need. And if any man neglect the appointed day for his contribution, let him make twofold compensation. And if any man of this society insult another, let him make compensation with thirty pence. Now we pray, for love of God, that every man hold this meeting with integrity, as we with integrity have ordered it. May God support us thereto."

for common repasts and common services,[1] they broadened into societies wherein the laity were also included, and which were devoted to the objects of social-religious gilds in general. Whether in any considerable number of instances the one in fact merged into the other, we do not pretend to say, only it would appear that in the end there was very little distinction to be drawn between the two.

[1] In the capitularies of Hincmar, Archbishop of Rheims, of the ninth century, we find a very interesting reference to these meetings of priests at the Kalends, in the form of naïve injunctions against the evil of partaking at table to excess. See Hincmari capitula presbyteris, c. 15 : Migne, *Patrologia Latina*, vol. 125, p. 777 (year 852).

CHAPTER XI

GILD RELIEF

THERE are one or two points which call for closer consideration than we have so far given them, and social-religious and craft gilds may very well be looked at together for the moment.

Apart from donations, the gilds were supported by the contributions of their members in the form of entrance fees and periodic subscriptions,[1] which were

[1] Smith, *English Gilds*, p. xxxv ; Ennen, *Geschichte der Stadt Köln*, i. p. 539 ; Wilda, *Gildenwesen*, pp. 318, 332, 343. Probably periodical subscriptions were only a later development, and in the earlier days it was a question of levies as occasion demanded, as for instance in the case of the poverty or sickness of a member, or his going on a pilgrimage : Brentano, *Die Arbeitergilden der Gegenwart*, p. 50. There were, in addition, the "house fees, or 'rights of the house,' which were payments to the Officers, such as 'to the Alderman 1d., to the Dean 1d., and to the wax ½d.' ; there were payments 'to the light,' for the feast," &c. : Smith, ibid., p. xxxii. The amount payable on entrance as well as the question of further contribution varied in different gilds, *e.g.* :—*Entrance Money.* Gild of Holy Trinity, Cambridge (begun 1377 or prior), 13s. 4d. : ibid., p. 267 ; Gild of Garlekhith, London (begun 1375), 6s. 8d. : ibid., p. 3 ; Gild of St. Anthony, Lynn, Norfolk, 5s. : ibid., pp. 45, 46 ; Gild of St. Thomas of Canterbury, Lynn, Norfolk, 3s. 4d. : ibid. p. 60 ; Gild of St. Leonard, Lynn, Norfolk, 3s. : ibid., p. 50 ; Gild of the Nativity of St. John the Baptist, Lynn, Norfolk, 2s. : ibid., p. 59. *Subscriptions.* Gild of Garlekhith, London (begun 1375), 2s. yearly : ibid., p. 4 ; Gild of the Blessed Virgin Mary, Hull (founded 1357), 2s. 2d. each year, to be paid quarterly, for each married couple and for each single man or woman : ibid., pp. 155, 156 ; Gild of the Resurrection of our Lord, Lincoln (founded 1374),

either in money or in kind, or both, wax for candles, barley, doubtless for ale, and honey for mead being customary forms of contribution.[1] The contents of the chest, therefore, the gild-house and all the goods and chattels of the gild were the common property of the members, on which all had equal claim, to the use of which all had common right,[2] and which were expended and accounted for by responsible officers.[3]

Entrance fees and subscriptions were sometimes payable in one amount, sometimes in instalments.[4] Sometimes a difference was made in favour of women members and married couples in the gild.[5]

Penalties were imposed for non-payment of the

xiiid. by four separate payments: Smith, *English Gilds*, pp. 175, 176; Gild of the Tailors, Exeter (granted a charter by Edward IV. 1466), full craftsmen to pay 12d. yearly, and craftsmen outside the liverymen 6d. yearly: ibid., p. 313.

[1] Smith, ibid., p. xxxii; Wilda, *Gildenwesen*, pp. 118, 332, note 4; Gierke, *Das deutsche Genossenschaftsrecht*, i. p. 386; Ennen, *Geschichte der Stadt Köln*, ii. p. 621; Brentano, *Die Arbeitergilden der Gegenwart*, p. 50. The Shoemakers' Gild, Frankfort (1355), required from entrants so much for the chest, two pounds of wax, and two quarters of wine: Gierke, ibid., p. 369; Gild of Tailors of Lincoln (founded 1328), a quarter of barley, and 12d. "to the Ale": Smith, ibid., p. 182; Gild of Tylers of Lincoln (founded 1346), a quarter of barley, and 2d. "to the Ale": ibid., p. 184; Gild of St. Mary, Beverley, Yorkshire (founded 1355), 5s. and a pound of wax: ibid., p. 149.

[2] Gierke, ibid., p. 396; Herbert, *History of the Twelve Great Livery Companies*, i. pp. 40, 41.

[3] Smith, ibid., pp. xxxii, xxxv.

[4] *E.g.*, (Entrance) Gild of St. Benedict, Lincoln, 6s. 8d. in two instalments: Smith, ibid., p. 174; Gild of St. Katherine, Stamford (ordinances of 1494), 6s. 8d. to be paid in four years after the first year: ibid., p. 190; (Subscriptions) Gild of the Blessed Virgin Mary, Hull: see p. 141, note 1; Gild of the Resurrection of our Lord, Lincoln: ibid.

[5] *E.g.*, Gild of St. George, Norwich (begun 1385), entrance 6s. 8d., women 3s. 4d.: Smith, ibid., p. 450; Gild of St. John Baptist, Hull, entrance 13s. 4d., or 6s. 8d. if a man marries a sister of the gild and wishes to join: ibid., p. 162; Gild of the Blessed Virgin Mary, Hull, see p. 141, note 1.

sums due.[1] In some gilds, however, the fact of poverty released the member from payment,[2] whilst in others payment had still to be made out of the amounts granted.[3]

Assuming then that the dues had all been paid regularly,[4] it would seem as if assistance in case of want was something to which a member was entitled,[5] the only condition generally[6] being that such want should be the outcome of purely fortuitous circumstances and in no way the fault of the applicant.[7]

[1] *E.g.*, Gild of the Resurrection of our Lord, Lincoln (founded 1374), those in arrears with subscriptions to pay a pound of wax: Smith, *English Gilds*, p. 176.

[2] *E.g.*, Gild of Holy Trinity, Cambridge (begun 1377 or prior): Smith, ibid., p. 267; Gild of Tailors, Exeter (granted a charter by Edward IV. 1466): ibid., p. 314.

[3] *E.g.*, Gild of the Blessed Virgin Mary, Hull (founded 1357): Smith, ibid., p. 157; Gild of Corpus Christi, Hull (founded 1358): ibid., p. 161; Gild of Tailors of Lincoln (founded 1328): ibid., p. 182.

[4] Thus in the regulations of the Gild of Garlekhith, London (begun 1375), if a member have "done . . . all the duties within the time . . .": Smith, ibid., p. 5. See also Gild of Tailors, Exeter (granted a charter by Edward IV. 1466): ibid., p. 319.

[5] In spite of such words as the following (which would seem to be exceptional): Gild of Young Scholars, Lynn, Norfolk (begun 1383), relief in necessity to be granted "*by one assent of the brethren*": Smith, ibid., p. 52; Gild of Holy Cross, Stratford-upon-Avon (begun prior to 1279), "*so long as he bears himself well and rightly towards the bretheren and sisteren*": ibid., p. 219.

[6] Occasionally there was some other stipulation, *e.g.*, Gild of Garlekhith, London (begun 1375), where membership for seven years previous was a condition of receiving relief: Smith, ibid., p. 5.

[7] *E.g.*, Gild of the Resurrection of our Lord, Lincoln (founded 1374): Smith, ibid., p. 176. The same thing is variously expressed: "Without any self-guilt," Gild of Holy Trinity, Cambridge (begun 1377 or prior): ibid., p. 267; not "through any . . . bad way of life," Gild of the Blessed Virgin Mary (St. Botulph's), Cambridge (begun prior to 1389): ibid., pp. 269, 270; "So it be not through his own misdoing," Gild of St. Katherine, Aldersgate, London: ibid., p. 7; "Through God's sending," Gild of St. Leonard, Lynn, Norfolk: ibid., p. 50; "By the visitation of God, or by casual adventure," Gild of Tailors, Exeter (granted a charter by Edward IV. 1466): ibid., p. 319.

As a general rule, relief was accorded for so long as the need should continue,[1] and was given absolutely. We do find instances, however, where there were limits as to the number of times or the period during which it was to be given,[2] and other instances where it was to be regarded as an advance merely, in the event of the recipient being able to make repayment subsequently.[3] One scale of relief, which was adhered to so far as the goods of the gild sufficed,[4] seems usually to have been applicable to all members indiscriminately, though we sometimes have distinctions drawn, as for example in favour of one who had served as Master.[5] Sometimes, too, no amount was fixed, and the question was left to be

[1] *E.g.*, Gild of Garlekhith, London (begun 1375), "term of his life, but he be recovered of his mischief": Smith, *English Gilds*, p. 5; Gild of the Purification, Lynn, Norfolk, "till he may help himself": ibid., p. 64; Gild of St. John Baptist, Oxeburgh, Norfolk (begun 1307), "while that he is at mischief": ibid., p. 122; Gild of Holy Trinity, Cambridge (begun 1377 or prior), "every week of his life which the need lasts": ibid., p. 276.

[2] *E.g.*, Gild of Fullers of Lincoln (founded 1297), "for three years": Smith, ibid., p. 181; Gild of St. Benedict, Lincoln, "so much yearly for three years": ibid., p. 173; Gild of the Palmers, Ludlow, see p. 145, note 1.

[3] *E.g.*, Gild of St. Benedict, Lincoln: Smith, ibid., p. 173. Cf. Gild of the Blessed Virgin Mary, Hull (founded 1357), ibid., pp. 156, 157. Gild of Fullers of Lincoln (founded 1297), repayment was to be made by those who were afterwards able. In the case of a member who could not, the "debt" was to be repaid to the gild out of what was collected after his death "for his soul's sake," the balance to be "faithfully applied for his soul's sake": ibid., p. 181.

[4] *E.g.*, Gild of Young Scholars, Lynn, Norfolk (begun 1383): Smith, ibid., p. 52. The Gild of St. Clement, Cambridge (ordinances of the fifteenth century), provided relief at the rate of 4d. weekly, so long as the goods of the gild were worth 40s. or more: ibid., pp. 278, 279. Two other Cambridge gilds contained a like regulation: ibid., pp. 272, 273.

[5] *E.g.*, Gild of Tailors, Exeter (granted a charter by Edward IV. 1466) relief 10d. weekly, or if he had been Master, 14d.: Smith, ibid., p. 319.

settled according to the discretion of the officers, the ability of the members to help, the deserts or condition of the needy party or the general circumstances of the case.[1]

Professor Ashley[2] holds that such relief as the

[1] Gild of the Palmers, Ludlow (ordinances 1284), "When it happens that any of the bretheren or sisteren of the gild shall have been brought to such want, through theft, fire, shipwreck, fall of a house, or any other mishap, that they have not enough to live on; then once, twice, and thrice, but not a fourth time, as much help shall be given to them out of the goods of the gild, as the Rector and Stewards, having regard to the deserts of each, and to the means of the gild, shall order": Smith, *English Gilds*, p. 193; St. George's Gild, Warwickshire, members to be "relieved by the alms of the brethren and sisters according to their estate": Leach, *History of Warwick School*, p. 98; Gild of Sts. Fabian and Sebastian, Aldersgate, London, provided, as to a member in distress, "if it so befall that he be young enough to work, and he fall in mischief, that the brethren help him, each man with a portion, what his will be, in way of charity, saving his estate": Smith, ibid., p. 9; Gild of St. Thomas of Canterbury, Lynn, Norfolk (begun 1376), all the other members were to help "with a portion of their chattels, according to their power": ibid., p. 48; Gild of Corpus Christi, Coventry (founded 1348 or prior), the member in need was to receive help "according to the means of the Gild": ibid., p. 232; Gild of the Blessed Mary, Chesterfield (founded 1218), "the bretheren . . . shall, in turn, supply him with needful food, or shall find for him a house of religion where he may stay during life": ibid., p. 166; Gild of the Holy Cross, Stratford-upon-Avon (begun prior to 1279), "they shall find him in food and clothing and what else he needs": ibid., p. 219; Gild of the Palmers, Ludlow (ordinances of 1284), in certain cases the goods of the gild were to be "largely bestowed": ibid., p. 194; Gild of St. Mary, Beverley, Yorkshire (founded 1355), relief was certainly fixed, but in three grades—8d., 6d., 4d. weekly, as the Alderman and Stewards thought fit after visiting: ibid., p. 150; St. Katherine's Gild, Coventry (founded in the reign of Edward III.), "yl serra troue a la costage de la dite Gilde covenablement solounc de que son este demaunde": Dugdale, *Antiquities of Warwickshire*, p. 122; Gild of Weavers, Newcastle-on-Tyne (earliest known ordinances are 1527): Walford, *Gilds*, p. 199.

[2] *Introduction to English Economic History*, I. ii. p. 324, 325. See also, for a similar opinion, Rüdiger, *Versicherungswesen*,

gilds granted does not at all correspond to that provided by the later friendly societies. The payments, he asserts, were not looked upon as something a member in distress could claim in return for his subscriptions. These were primarily intended for other purposes altogether; in the case of social-religious gilds for altar lights, masses and the services of priests, and in the case of the craft gilds for paying the ferm due to the king and for pageants;[1] often too there was a special contribution from each member when cases of need arose. As a rule, he argues, the relief was regarded by the gilds as so much alms-giving bestowed to bring spiritual benefit to the donor.[2]

p. 1. Vivante, *Versicherungsgesellschaften*, p. 2, argues that the support given by the gilds was variable according to the means of the institution and the need of the member, and that there was therefore no question of indemnity against a premium fixed in advance. For that matter the same might in some measure be said of modern life insurance under the bonus system, where the amount received depends also on the means of the company at the time.

[1] The performance of miracle and other plays, as well as the holding of pageants, was undertaken by many of the social as well as the craft gilds. *E.g.*, Gild of the Lord's Prayer, York (in existence in the fourteenth century): Smith, *English Gilds*, pp. 137 sqq.

[2] Same opinion, Hasbach, *Das Englische Arbeiterversicherungswesen*, pp. 10 sqq., 23. The fact that also non-members benefited from the gilds might seem to support the view, but for the other evidence. Smith says as to this: "Of the good works done by the Gilds other than among their own personal members, many instances may be found. It was not unfrequent for a number of poor to be fed on the feast-day at the Gild-hall; thus in two of the Lincoln gilds it was ordered that as many poor as there were brothers and sisters were to be fed with bread, ale and fish; and in the Gild of Gertonburdych, Norfolk, provision was made for the distribution of a certain amount of corn and barley yearly. A Gild in York found beds and attendance for poor strangers; the Gild of the Holy Cross in Birmingham had almshouses for poor people of the town, and help to the poor of the town was one of the 'workes of charity' for which the Gild in the same place, called 'Lenche's Trust,' was founded": ibid. pp. xxxvi and xxxvii.

It seems difficult, however, to follow Professor Ashley in this view. Not only does the constant provision for relief in times of distress lead one to the belief that it was regarded as an important object of gild organisation,[1] but the provision appears to be an absolute one, and something far removed from the mere giving of alms. Nor does the fact that frequently the case was met by special contribution at the time, in any way invalidate this contention; it is only the natural procedure lying at the root of all mutual insurance. Professor Ashley refers, in support of his theory, to two examples of the use of the term "almesse" in gild statutes.[2] In the first, however, the use of the word has no connection with the assistance to poor brethren, which is provided for lower down in the statutes;[3] in the second it certainly is applied to the help given to those in distress, but the wording of the clause[4] makes it abundantly clear that it is no optional donation from those members who are charitably inclined, but an amount to which the person in need is entitled by a definite statute of the gild.

Even the "alms to the poor for the soul's sake of the dead," to which Professor Ashley refers, were not necessarily "alms" at all in the sense of voluntary payments by the members. Thus we find the following provision of the Gild of the Fullers of

[1] Though, of course, as already indicated (see above, pp. 130, 131), not insurance against any contingency in particular, but the conception of mutual responsibility in general, was the mainspring of gild activity. See Ehrenberg, *Studien zur Entwicklungsgeschichte der Versicherung*, I. iv. p. 369.

[2] Viz., those of the Fraternitas Sancte Trinitatis, Norwich (begun 1364), and the Gild of the Peltyers, Norwich (begun 1376): *Introduction to English Economic History*, I. ii. note 64 of p. 325 (on p. 371).

[3] See Smith, *English Gilds*, p. 26.

[4] Smith, ibid., p. 31.

Lincoln: "When any of the bretheren or sisteren dies, the rest *shall* give a halfpenny each, to buy bread to be given to the poor, for the soul's sake of the dead"; [1] which does not suggest an optional payment, and indeed there is a penalty of half a pound of wax for non-compliance, exactly as in the case of other regulations.[2]

The phrase "for kindness' sake" found sometimes, as in the rules of the Gild of St. John Baptist, York (the distressed member of which was to have "for kindness' sake, sevenpence every week"),[3] and similarly in those of the Gild of the Blessed Virgin Mary, Hull,[4] might appear, at first sight, to furnish an argument in favour of Professor Ashley's view. But when, as in these examples, the sum to be paid was fixed by the statute, it is obvious how little was actually left to the operation of mere "kindness." As a matter of fact, the use of the term simply has reference to the primary object for which so many gilds were formed,[5] and does not affect the question before us. It cannot be denied that there are instances where it would appear as if the extent of the assistance given did depend on the generosity of the various members, as in the Gild of St. Peter, Lynn, Norfolk: "And qwat broyer or syster falle in pouerte, and may nout helpe hym-self, yanne schullyn ye breyeryn and ye systeryn helpyn hym of here almesse;" [6] but such are exceptional.

[1] Smith, *English Gilds*, p. 180. Here, at any rate, it is not primarily the spiritual benefit of the *donor* (see p. 146, above) that is being considered.

[2] Smith, ibid., p. 180.

[3] Smith, ibid., p. 146.

[4] Smith, ibid., p. 157.

[5] See above, pp. 128, 129.

[6] Smith, ibid., p. 63. Cf. Gild of Sts. Fabian and Sebastian, Aldersgate, London (see p. 145, note 1, above), which, however, is only for a special case. The ordinary relief of the gild was according to a fixed scale: Smith, ibid., p. 9.

Though possibly in the case of the wealthier gilds the assistance given[1] was often sufficient for the maintenance of the distressed members, yet even amongst them it is questionable whether this can be said to have been the rule, and it certainly cannot have been with very many of the smaller fraternities.[2] Something of this kind may have been realised by the gilds themselves, for in later days, with the help of bequests, they provided their own almshouses for needy members. At the first perhaps hiring a cottage or two, they might later take over some poor or under-endowed hospital for the purpose, or build premises of their own. In the hospital of St. Thomas at York, connected with the important fraternity of Corpus Christi, there were "kept yearly ten poor folks, having each of them towards their living by the year £3 6s. 8d."[3] The same feature has been noticed already in connection with the Livery Companies. Probably at the beginning the custom was only to find shelter, but ultimately, as in the above example, periodical sums were given for the support of the inmates.

[1] For what follows, see Ashley, *Introduction to English Economic History*, I. ii. pp. 324–6.

[2] Ashley, ibid., p. 324: "A penny from each member at each 'morning-speech,' *i.e.*, three or four times a year, amounting perhaps in all to some twelve shillings in the course of the year; or in other instances three or four pence a week." In considering all these figures, however, due allowance must be made for the difference that has taken place in the purchasing power of money.

[3] Quoted by Ashley, ibid., p. 326.

PART II

OTHER INFLUENCES

CHAPTER XII

USURY

In Rome the evil of usury was early apparent, robbing numbers of the citizens of their independence, and the repeated attempts of the legislation to suppress it were unavailing, means being found to evade the regulations.[1] With the growth of Christianity grew up a body of doctrine on the subject. True, earlier writers—Aristotle, Cicero, and Seneca, among others—had philosophised already, and in fact Aristotelian teaching of the barrenness of money and the consequent injustice of the making of gain therefrom apart from labour, was destined to have a marked influence, being the argument which most easily gripped the public mind.[2] But it was the direct injunctions of the Old Testament upon which the Fathers, Cyprian and Tertullian, for example, based their condemnation of usury.[3] After the recognition of Christianity under Constantine, the appeal was still to the Scriptures, primarily to the New Testa-

[1] Cunningham, *Christian Opinion on Usury*, pp. 5, 55; Roscher, *Principles of Political Economy*, ii. p. 129, note 3. Cf. Wilson, *Discourse uppon usurye*, Epistle, eighth page.

[2] Ashley, *Introduction to English Economic History and Theory*, I. i. p. 152; Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. p. 9; Goldschmidt, *Universalgeschichte des Handelsrechts*, p. 138.

[3] Funk, *Geschichte des kirchlichen Zinsverbotes*, p. 2.

ment but to the Old also,[1] and there was added the weight of the pronouncements of the Fathers.[2] But later that was not allowed to suffice. New points of vantage were sought for. As early an authority as Lactantius had pointed to the dictates of ordinary humanity;[3] and, whilst men still had recourse to the authority of the Scriptures and the Fathers, there was amongst later writers a continuous attempt to reach the conscience by reference to natural conceptions of right and wrong.[4] And their attempt was made all the more easy since in early times, before the organisation of industry and commerce, loans were almost entirely contracted to meet some pressing need, and interest was, more often than not, synonymous with the oppression of the poor.[5]

Roscher[6] has well summarised the causes which give rise to the "strong aversion to the taking of interest prevalent among nations in a low stage of civilisation. Industrial enterprises of any importance do not as yet exist here at all, and agriculture is most advantageously carried on by means of a great many parcels of land, but with

[1] Funk, *Geschichte des kirchlichen Zinsverbotes*, pp. 3, 4; Ashley, *Introduction to English Economic History and Theory*, I. i. pp. 148, 151, 152; Schmoller, *Zur Geschichte der nationalökonomischen Ansichten*, p. 555; Roscher, *Principles of Political Economy*, ii. pp. 129, 130.

[2] Funk, ibid., p. 33.

[3] Funk, ibid., p. 2. We hear of high dignitaries of the Church engaging in the business of interest in the early Christian era: ibid., p. 3: cf. ibid., p. 1.

[4] Funk, ibid., pp. 5, 34 sqq.

[5] Roscher, ibid., p. 130; Ratzinger, *Geschichte der Kirchlichen Armenpflege*, p. 401. According to Knies, *Politische Oekonomie*, pp. 118, 119, it was regard for the poor which moved the Church to action. Knies gives his ground for supposing that it cannot have sprung from complete ignorance of the productiveness of money.

[6] Ibid., p. 128. See also Cunningham, *Christian Opinion on Usury*, p. 42.

little capital. The purchase of land is so rare, and hampered by legal restrictions to such a degree, that loans for that purpose are almost unheard of. And just as seldom does it happen, by reason of the superabundance of land, that the heir of a land-owner borrows capital to effect an adjustment with his co-heirs, and thus enter alone into the possession of the estate." Thus the taking of any interest, not merely of unusually high interest, was reprobated.[1]

Whilst, therefore, the writings of the early Fathers are for the most part discussions on various passages of Scripture,[2] the Schoolmen and Canonists take a different ground. They refer back to Aristotle's teaching, but "the whole subject of buying and selling is treated—not with reference to the barrenness of money— . . . but with regard to greed of gain on the part of the dealers. The Aristotelian distinction between bartering for the sake of common convenience and dealing for the sake of gain is indeed quoted, but chiefly to prove that some sort of trading is right and necessary."[3] Thomas Aquinas, in fact, admitted the justice of interest as a compensation for actual loss (*damnum emergens*), and later Schoolmen added also the case of interest for cessation of gain (*lucrum cessans*).[4]

[1] Below, *Wucher*, p. 1362; Knies, *Politische Oekonomie*, pp. 118, 119; Funk, *Geschichte des kirchlichen Zinsverbotes*, p. 6. The theory that only the taking of above a certain rate of interest was usurious, appeared in the sixteenth century: Ashley, *Introduction to English Economic History and Theory*, I. i. p. 154.

[2] Cunningham, *Christian Opinion on Usury*, p. 3.

[3] Cunningham, ibid., p. 28. Cf. Ashley, ibid., pp. 152–4; Ratzinger, *Geschichte der Kirchlichen Armenpflege*, p. 399.

[4] Ratzinger, ibid., p. 400; Cunningham, ibid., pp. 31, 32. For the general development of opinion among the Schoolmen in favour of interest on the ground of *damnum emergens*, *lucrum cessans*, *risico*, and *mora*, see Funk, ibid., pp. 33–42

Though the early Fathers condemned interest unreservedly, yet there was considerable diversity of opinion amongst churchmen and laity alike,[1] and successive Councils[2] sought to deal with the problem. Naturally they were mostly concerned with making and attempting to enforce rules for the clergy, and penalties—excommunication by the Council of Arles in 314, degradation by that of Nicæa in 325—were imposed. It is true that by the Synod of Elvira, 306, laics who were guilty of taking interest were threatened with excommunication, but this enactment, in any case exceptional, had reference only to Spain and even then apparently remained only a short time in force. Partly perhaps owing to differences of opinion, partly doubtless from considerations relative to the attitude of temporal powers, the early Councils sought to influence the laity in this matter only by admonition and example.[3] The later synods continue to forbid the practice of interest to the clergy, and reference may be made here to the first (between 345 and 348), third (397), fourth (398), and sixth (419) Synods of Carthage; that of Laodicea, between 343 and 381; Hippo, 393; Arles, 443; Tours, 461; Agde, 506; Tarragona, 516; Dovin in Armenia, 527; Orleans, 538; Constantinople, 692; and Toledo, 694, which follow in the main that of Nicæa.[4]

This procedure, which on the one hand condemned interest absolutely and entirely, and on the other took direct steps to root out the evil only as regarded the clergy, relying on the efficacy of ex-

[1] Funk, *Geschichte des kirchlichen Zinsverbotes*, pp. 1, 7.

[2] Funk, ibid., pp. 7, 8. For the Councils in general, see Hefele, *Conciliengeschichte*.

[3] See Cunningham, *Christian Opinion on Usury*, p. 21; Funk, ibid., pp. 8, 9, 11–13.

[4] Funk, ibid., p. 9.

hortation as far as the laity were concerned, was pursued by the Greek Church in the centuries that followed.[1] If we inquire as to the reason of this striking discrepancy between theory and practice, the answer is presumably to be found in the fact that the laws of the Eastern Empire permitted, except for a brief period during the ninth century, the taking of interest.[2]

But if we turn to the Latin Church,[3] we find a very different state of affairs. Here not only clerics but also laics were threatened with punishment. This attitude may be said to date from the year 787, when two synods, one in the North of England and the other in the South, issued the first general prohibition of interest, apart from Elvira, and two years later it was further forbidden by the Synod of Aix-la-Chapelle and, what is still more striking, equally by the capitulary of Charlemagne. Church and State,[4] then, took common ground. Despite the economic conditions of those days which alone rendered it possible for such ordinances to be carried into effect, and the response which it found in the consciences of so many, it did not operate without some discontent, some opposition, and some evasion, and the Synods of Mainz, Rheims, and Châlons, 813, and Aix-la-Chapelle, 816, had to issue admonitions not only to the laity but even to the clergy, and the Synod of Paris, 829, had also to concern itself with the matter. Apparently, however, the wished-for results were not attained, for we find the Synods of Aix-la-Chapelle, 836, and Meaux, 845, threaten-

[1] Funk, *Geschichte des kirchlichen Zinsverbotes*, pp. 14, 15. There was possibly a break in the ninth century: ibid., p. 15.

[2] See Funk, ibid., pp. 16, 17.

[3] See Funk, ibid., pp. 17 sqq.

[4] The State, then and later, was guided more by political than by ethical considerations, doubtless: see Goldschmidt, *Universal-geschichte des Handelsrechts*, pp. 141, 142.

ing the clergy with degradation, and that of Pavia, 850, going still further by ordering the restitution of interest taken and threatening the laity with excommunication for the offence. The Synods of Valence, 855, Toucy, 860, strongly forbade it, that of Worms, 868, renewed the injunctions of the Synod of Carthage, 419, and the constitutions of Bishop Riculph of Soissons, 889, contain a simple prohibition of interest. Archbishop Hincmar of Rheims, in his writing to people and clergy from Laon, gave express injunction against interest, only as to the laity, and in 1049 a Synod of Rheims contented itself with simply forbidding it to clergy and laity alike. But the Synod of Gerunda, 1078, issued a general ban against the stubborn usurer, and that of Poitiers in the same year ordained a like punishment, at least for usurious clergy. The Synod of London, 1125, would punish the latter with degradation; that of 1138 with the loss of their living. But if we fail to find uniformity in the ordinances of these centuries, things afterwards undergo a change. The Second Lateran Synod, 1139, in injunctions which operated in the whole of the Western Church, laid down that usurers should be subject to the punishment of infamy for their whole life, and, if they died usurers, were not to be accorded burial by the Church; and the clergy were warned to exercise extreme care in admitting them to the sacrament.

The result still seems to have been disappointing. In any case, the Synod of Tours, 1163, drew attention to the fact that the prohibition was often circumvented by the clergy, and the Third Lateran Synod, 1179, complained that usury had become so prevalent that many gave up other callings to devote themselves to it. Known usurers, therefore, were not to be admitted to communion or

accorded Christian burial. The Synod of Avignon, 1209, had to deplore that it was carried on just as if it were a recognised business, and usurers generally were placed under a ban, to be proclaimed on Sundays and feasts; individuals were to be excommunicated. In a short time this procedure seems to have become customary in France, and to have been extended by the Provincial Synod of Mainz, 1261, to the Empire. In 1330, by the Synod of Lambeth, it passed over to England,[1] to the extent, at any rate, that a general ban was to be proclaimed four times a year against usurers, among others. It looks as if the clergy (apart altogether from such as actually carried on the business themselves) were not so active as they might have been in putting the decrees into execution; at any rate they were made subject to penalties for failure in this direction.

If even the clergy were so lax, it is not to be wondered at if the laity did not very rigidly observe the doctrines of the Church. In any case, princes everywhere followed in the footsteps of Charles the Great and forbade the taking of interest to their Christian subjects, but, as if admitting its usefulness, permitted Jews and aliens to practise it.[2] The Second Council at Lyons, 1724, after renewing the ordinances of the Third Lateran Council as to usurers, went on to impose on communities, as well as private persons, the duty of preventing foreign usurers from carrying on their business in their district, forbidding the letting to them of houses

[1] Edward the Confessor is said to have prohibited usury at the beginning of his reign. Edward III. prohibited it in 1341: Anderson, *Origin of Commerce*, i. pp. 109, 315.

[2] See Funk, *Geschichte des kirchlichen Zinsverbotes*, pp. 25 sqq. As to the Caursines, Lombards, and Jews, see ibid.; Ashley, *Introduction to English Economic History and Theory*, I. i. pp. 196 sqq.; Matthew Paris, *English History*, i. pp. 2 sqq.

for the purpose under severe penalty. With the Synod of Vienne,[1] 1311, the high-water mark of Church legislation on the question may be said to have been reached. Temporal authorities who made laws in favour of usury or hindered the reclamation of usurers' gains were to be put outside the pale of the Church, and any one obstinately asserting that usury was no sin was declared a heretic. Henceforth the object was largely to solidify and carry into effect existing ordinances, and the matter was left for the most part to the local councils, in the proceedings of which, right down from Bologna and Münster in 1317 to Ratisbon in 1512, it constantly recurs. There are repeated complaints as to the spread of the evil. Various subterfuges[2] were resorted to in order to evade the prohibition; against these the Canon Law was also directed.[3]

Up to this time there was probably no hardship in these enactments, economic conditions being such as they were. We can hardly suppose that otherwise "the prohibition of usury would have been maintained by public opinion, enacted by statute, and enforced in the courts throughout the fourteenth century."[4] In the fifteenth century we have the appearance for the first time of "a complete and systematic economic doctrine . . . touching every side of the economic life of the time . . . that of the canon law. . . Theology . . .

[1] Confused with Vienna by Lalor in translating Roscher, *Principles of Political Economy*, ii. p. 131; also by Ashley, *Introduction to English Economic History and Theory*, I. ii. p. 382.

[2] See Funk, *Geschichte des kirchlichen Zinsverbotes*, pp. 29, 30.

[3] Funk, ibid., p. 30 (for exceptions permitted, see pp. 31–3); Ashley, *Introduction to English Economic History and Theory*, I. i. pp. 158–63.

[4] Ashley, ibid., p. 157. See ibid., pp. 155–7, 196, also Cunningham, *Christian Opinion on Usury*, Preface.

laid down certain principles of right and wrong in the economic sphere; and it was the work of the canonists to apply these to specific transactions and to pronounce judgment as to their permissibility." [1] "The prohibition of usury was . . . the centre of the canonist doctrine," [2] and the canonists had a solid basis in the pronouncement of the Council of Vienne and the almost universal prohibition of usury at the same period by the temporal powers.[3] Their teaching was the development of the principles, which had been laid down by the Church through the centuries, applied to the newer conditions,[4] and it was recognised in the spirit of the commercial legislature.[5]

As opportunities for investment increased, the basis of the canonist doctrine broadened. Doubtless, the process was not accomplished as smoothly as might have been desired, and there were jolts and hitches; but still there seems to be no reason for assuming that any real hindrance was caused to trade and commerce thereby, or that the mass of public opinion was really outraged.[6]

Indeed, before money had the "characteristics of capital," the doctrine of the canonists was to a great measure the expression of public opinion and the reflection of the conditions of the time; probably, and largely for that reason, the prohibition was in the main a success.[7] As trade developed it found

[1] Ashley, *Introduction to English Economic History and Theory*, I. ii. pp. 379, 380.

[2] Ashley, ibid., p. 395; Roscher, *Principles of Political Economy*, ii. p. 130.

[3] Ashley, ibid., p. 382; ibid., i. p. 151.

[4] Ashley, ibid., ii. p. 381.

[5] Ashley, ibid., p. 384; Cunningham, *Christian Opinion on Usury*, p. 43.

[6] Cunningham, ibid., Preface, and pp. 33, 36, 37; Roscher, ibid., pp. 131, 132; Ashley, ibid., p. 396.

[7] Ashley, ibid., pp. 436, 437; Schmoller, *Zur Geschichte der national-ökonomischen Ansichten*, p. 585. According to

out for itself ways to employ the new-born "capital," and as they were evolved the doctrine was ready, though not all at once, to add its consent to them. Chief among these were the partnership contract, the rent charge, and the triple contract. The triple contract (*contractus trinus*)[1] was a combination of three earlier recognised contracts, the partnership contract[2] and two contracts whereby a man could insure respectively against the loss of his capital and against fluctuation in the rate of his remuneration from it. Naturally, however, the union of the three, though it continued for obvious reasons to be known as a "partnership," produced what was in effect a loan at interest, and during the later part of the sixteenth century most Catholic theologians condemned it. But it had become common in business, and from the beginning of the seventeenth century the body of ecclesiastical opinion in its favour was very strong.[3] None the less this was a very different matter from the loan to distressed persons: the principle of the prohibition of usury in favour of the poor and economically weak, who were unable to help themselves, was still upheld as firmly as ever, and synods as far separated as Hildesheim in 1539 and Avignon in 1725, with many others in between, took their stand on the penalties for usury pronounced by the Councils of the Middle Ages. This did not, however, prevent several, such as Besançon, 1571; Brixen, 1603; Constance, 1609, from expressly declaring the permissibility of interest on the grounds of *damnum*

Goldschmidt, it was retained long beyond its time: for his condemnation of it, see *Universalgeschichte*, pp. 139–41.

[1] See Funk, *Geschichte des kirchlichen Zinsverbotes*, pp. 57 sqq.; Ashley, *Introduction to English Economic History and Theory*, I. ii. pp. 440 sqq.

[2] See Ashley, ibid., pp. 411 sqq.

[3] See Ashley, ibid., pp. 441 sqq.; Funk, ibid., pp. 57–60.

emergens and *lucrum cessans*,[1] the inconsistency of which was not so great as it may appear.[2]

The Reformation gave a heated discussion on the question, and the figures of Luther,[3] Melancthon,[4] Eck,[5] and Calvin[6] loom large. Temporal powers now began to repeal their prohibitions of loans at interest and to demand rather that the interest should be moderate. Already in 1553 Albert V. of Bavaria had taken this course; the example was soon followed in several Protestant German States, and almost exactly a hundred years later[7] the principle obtained Imperial recognition.[8] In England,[9] when Albert decided on this step, the opinion was against allowing usury at all, and in 1571 the feeling was still so prevalent that the law was strengthened in this sense.[10] About the same time, we have Thomas Wilson[11] writing of "that ugly, detestable and hurtful sin of usury" as the "chiefest cause of the greatest misery in this land." But before the close of the first quarter of the following century all this had altered; there was a complete reversal in public opinion, to be accounted for very largely by the revolution which had taken place in English commerce. The Church could not remain

[1] See Funk, *Geschichte des kirchlichen Zinsverbotes*, pp. 54, 55.

[2] Cf. Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. p. 70.

[3] See Schmoller, *Zur Geschichte der nationalökonomischen Ansichten*, pp. 558 sqq.; Ashley, *Introduction to English Economic History and Theory*, I. ii. pp. 456, 457.

[4] See Schmoller, ibid., pp. 573 sqq.; Ashley, ibid., pp. 457, 458.

[5] See Funk, ibid., pp. 63, 64; Ashley, ibid., pp. 441 sqq.

[6] See Ashley, ibid., pp. 458 sqq.

[7] 1654.

[8] See Funk, ibid., pp. 61, sqq.

[9] As to opinion in England, see Cunningham, *Christian Opinion on Usury*, pp. 56 sqq.

[10] 13 Elizabeth, c. 8.

[11] *Discourse uppon usurye*, fourth and eighth pages of Epistle.

uninfluenced by such changes, and, having set its seal to rent-charges and the triple contract, it was now not a very difficult step to allow even loans at interest.[1]

If we now turn to the points of actual contact between the canonist doctrine concerning usury and the economic institutions of the times, we find our special concern in the Rent Charges and the Montes, and at these we must now look.

[1] See Funk, *Geschichte des kirchlichen Zinsverbotes*, pp. 65–71. The adoption of the principle which permitted the charge of a moderate interest on the loans of the Montes Pietatis had probably an important part in moulding more modern opinion and changing the conception of the term "usury" from the payment of any interest at all to that of excessive interest; particularly as the loans of these institutions were essentially designed for the poor, who could not be assumed to have the opportunity of investing the money in business enterprise: Ashley, *Introduction to English Economic History and Theory*, I. ii. pp. 447, 451.

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CHAPTER XIII

RENTS OR ANNUITIES

AT the present day the term Life Assurance doubtless primarily suggests to the mind the payment by the assurer of a lump sum at the death of the assured who, during his lifetime, has been making periodical payments to secure it. In earlier times the position was more often reversed. The assured paid over the lump sum and received in return the periodical payments, until his death, from the assurer. It is this contract, still of course in wide use, that we shall now consider. As it exists in the present day at any rate, the contract certainly is life assurance, and in fact the influence the idea has had on the coming of modern life assurance in general can be appreciated by reference to the titles of the early works on which the science of life contingencies began to be built up; as it existed in the past, it probably was seldom accompanied by that measure of association indispensable to the existence of any true insurance. In our consideration we shall have to notice incidentally, in addition to these life-rents or life-annuities, rents or annuities granted for periods undetermined by death. Such, naturally, cannot be called life assurance, or indeed assurance of any sort.

The idea that the right to a certain rent, either in money or in kind, from a certain piece of land,

was a right which should be capable of transference, seems to have appeared early. But more than that, "starting with the rent which is a service rendered by tenant to landlord, a rent which had been 'reserved' when the tenancy was created and is thought of as something which remains to the giver or lessor after he has made the gift or lease, we may pass by three steps to a rent or annuity which is quite unconnected with land."[1] The main and preliminary difficulty in the process would lie in the laws governing the tenure of land, and the paying of the rent by the tenant to a third party not the owner of the land. But this was surmounted in one way or another,[2] and it soon became a common thing for a landowner to enter into a contract with a third party in respect to, say, a certain farm on his estate, whereby, in virtue of a sum of money paid down the latter became entitled to receive the rent whilst the land still remained in possession of the owner. From this it was an easy step to the purchase of the right to such a yearly amount, unattached to any particular farm but simply as a burden upon the whole estate.[3] Later, other property, as houses and shops, and permanent rights, such as rights by toll, began to serve as well as land,[4] and afterwards even movable personal property,[5] and

[1] Pollock and Maitland, *History of English Law*, ii. p. 129 and sqq.

[2] See Ashley, *Introduction to English Economic History and Theory*, I. ii. p. 406.

[3] Schmoller, *Zur Geschichte der national-ökonomischen Ansichten in Deutschland*, p. 557.

[4] Ashley, ibid., p. 410.

[5] Perhaps it is roughly correct to say that the sale and purchase of rent-charges filled the place of the interest loan against real property, and the montes of that against movable property : see Roscher, *Geschichte der National-Oekonomik in Deutschland*, pp. 10, 11.

credit.[1] Such annuities, *i.e.*, which did not "issue out of land," were known in the thirteenth century. They were said to "issue out of" the grantor's "chamber," the place where he kept what treasure he had. In actual fact, of course, they depended on the grantor's honesty and solvency.[2]

Throughout the whole of the Middle Ages, though probably not so much in this country as in Germany,[3] this contract,[4] the acquisition by purchase of a certain yearly rent, an "annuity," was in prominent use.[5] Sometimes it was a rent in perpetuity, unaffected, therefore, by the death of either party but passing down through their heirs (*census perpetuus*); sometimes it was for a period only (*census temporalis*), limited either by a definite number of years (*census certus*), or by the death of the receiver of the rent (*census incertus*).[6]

It bears a close resemblance to the interest loan,[7] with which, however, it must not be confused. The one was sanctioned while the other was prohibited, which point brings us to the question of the relationship of these annuities to the doctrine of usury. First of all, however, be it remarked that it is incorrect to assume that the annuity con-

[1] Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, ii. p. 107; Neumann, *Geschichte des Wuchers*, p. 245; Stobbe, *Beiträge zur Geschichte des deutschen Rechts*, p. 31; Blumhardt, *Einfluss des kanonischen Wucherverbots*, p. 78.

[2] Pollock and Maitland, *History of English Law*, ii. p. 133.

[3] Ashley, *Introduction to English Economic History and Theory*, I. ii. p. 405.

[4] Compare the contract mentioned by Roscher, *Principles of Political Economy*, ii. pp. 132, 133.

[5] Endemann, ibid., pp. 106, 107.

[6] Endemann, ibid., pp. 136, 137.

[7] Funk, *Geschichte des Kirchlichen Zinsverbotes*, p. 42.

tract was invented as a means for evading the usury laws.[1] Without doubt the existence of the prohibition of interest increased enormously the use which was made of the contract,[2] for by its means the landowner could obtain money for investment in his land, and the tradesman could secure capital to put into his business; it was for public bodies and private individuals a safe and convenient way of employing idle capital, and by the latter it seems also to have been used as a provision for old age, as this use of it was justified by Langenstein, one of the first to write at any length on the question towards the end of the fourteenth century.[3] But the contract was already in existence before the endeavour was really seriously made to enforce the prohibition.[4]

When, in the second half of the thirteenth century, the question was raised as to its moral nature, the contract was extensively employed. Not only laity but clergy, clerical and secular communities alike, made frequent use of it.[5] Into the arguings of the Schoolmen on the subject there is no need for us to enter.[6] In the end, investment in the form of rent-charge was expressly allowed by the canonist doctrine, the sanction being based on the decisions in

[1] Ashley, *Introduction to English Economic History and Theory*, I. ii. pp. 405, 406; Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, ii. p. 105; *Abt von St. Denis*, p. 6; Goldschmidt, *Universalgeschichte des Handelsrechts*, p. 141.

[2] Endemann, ibid., p. 107. Endemann ascribes a great part in the overthrowing of the usury doctrine to the rent-contract, which thereby, he adds, ultimately lost much of its own prominence: ibid., pp. 107, 108.

[3] Ashley, ibid., p. 409.

[4] Endemann, ibid., p. 105.

[5] Endemann, ibid., p. 103; Funk, *Geschichte des kirchlichen Zinsverbotes*, p. 43.

[6] See Funk, ibid., pp. 42–8.

favour of it of Martin V. and Calixtus III., in 1425 and 1455 respectively.[1] According to these decisions the contract must have reference to some definite property which bore income (*census realis*),[2] but later even this changed.[3] The first breach of the rule was the result of an appeal to the Pope for an exception in favour of Aragon and Sicily, where, it was urged, the practice of usury was such a scourge that it would be the lesser of the two evils, to depart from the strict letter and allow the making of rent-contracts on the basis of movable property and even of general credit (*census personalis*).[4] This was permitted by a bull of Nicholas V. in 1452. But, not unnaturally, what was considered permissible for Aragon and Sicily was also elsewhere considered desirable, and there was the usual conflict of opinion. In 1568 there was a bull of Pius V. forbidding the *census personalis*,[5] but it still continued to have strong support, and came to be regarded more and more as allowed.[6]

There was also another side on which the practice of rent-charges came in contact with doctrine. In its first stages the contract could not be recalled; before long, however, the right to redeem the charge was accorded to the payor, but the corresponding right—*i.e.*, that of claiming the redemption of it—was still withheld from the payee.[7] The privilege was one likely to be demanded by the other side also, and in the second half of the fifteenth

[1] Ashley, *Introduction to English Economic History and Theory*, I. ii. pp. 408–10.

[2] Ashley, ibid., p. 452; Funk, *Geschichte des kirchlichen Zinsverbotes*, p. 56.

[3] Ashley, ibid., pp. 452, 453.

[4] See Funk, ibid., pp. 45, 46.

[5] Ashley, ibid., p. 452.

[6] Funk, ibid., pp. 56, 57; cf. Blumhardt, *Einfluss des kanonischen Wucherverbots*, p. 78.

[7] Funk, ibid., p. 46.

century[1] it began to appear as a provision, that also the receiver of the annuity should be entitled to recall the contract. None the less, no unanimity of opinion existed on the point,[2] and towards the end of the following century the question as to whether or not it was permissible was earnestly discussed by a number of learned theologians at Rome, who found in its favour (1581). Henceforth, though the arrangement still did not lack opponents, its supporters were constantly on the increase.[3] In passing, we may notice that as early as the thirteenth century we find legislation to determine the rates of redemption. In some places, as in Lübeck in 1240, the charges were to be redeemable at the price paid for them originally; in other places there were fixed rates. Naturally these varied in different districts according to economic conditions: thus we have, for example, twenty years' purchase in Bâle in 1441, and only twelve years' purchase in the almost entirely agricultural Prussia of about the same time.[4] The rate of redemption thus laid down decided, of course, to a great extent the rate of interest that could be got from the purchase of a rent-charge.

It may now be worth while to turn back and look at a few of the early appearances of annuity contracts, and more particularly of life-annuities.

The granting of life-annuities was practised by the Church as far back as the eighth century: in return for sums of money handed over to them,

[1] Fourteenth century, according to Funk, *Geschichte des kirchlichen Zinsverbotes*, p. 46, but cf. Ashley, *Introduction to English Economic History and Theory*, I. ii. p. 407.

[2] Funk, ibid., p. 47. For a somewhat exceptional case laid before the Sorbonne in 1490, see ibid., pp. 47, 48. As to rates of redemption, see Ashley, ibid., pp. 407, 408.

[3] Funk, ibid., p. 55.

[4] Ashley, ibid., p. 407.

monasteries and other religious bodies gave pieces of land for lifelong use or rents for life.[1] In England the buying of an interest in an estate for a period of years, or for a life, or for several lives, is met with early.[2] The ordinances of the Council of Celchyth,[3] A.D. 816, which profess the desire of keeping "with all diligence, untouched and pure" the precepts of the faith,[4] whilst impressing the general need of caution in such matters, lay down the rule that the lands of the Church should not be so charged for more than the term of a single life.[5] Apparently, then, to charge them for the term of a single life was regarded as something neither new nor undesirable. The same restriction occurs in the deed ostensibly drawn up on the occasion of the dedicating of the Abbey of Winchelcomb by Kenulf, King of Mercia, A.D. 811.[6] The authenticity of the deed is somewhat doubtful, but, in any case, in a Worcester charter A.D. 897 the regulation is referred to as being in the title-deeds of Kenulf and as having been broken by Quenthrytha and Ælfleda, successive Abbesses of Winchelcomb. It is regarded as possible that Kenulf's adoption of the limitation may have suggested the general rule.[7]

[1] Cohn, *System der Nationalökonomie*, iii. p. 647; Goldschmidt, *Universalgeschichte des Handelsrechts*, p. 382; Stobbe, *Beiträge zur Geschichte des deutschen Rechts*, pp. 25 sqq., and *Handbuch des Deutschen Privatrechts*, iii. pp. 346 sqq.; Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, ii. pp. 143 sqq. Cf. Lamprecht, *Deutsches Wirtschaftsleben im Mittelalter*, I. ii. pp. 678 sqq.

[2] Cunningham, *Christian Opinion on Usury*, pp. 23, 24.

[3] See Haddan and Stubbs, *Councils and Ecclesiastical Documents*, iii. pp. 579 sqq.

[4] Haddan and Stubbs, ibid., p. 580, Cap. I.

[5] Haddan and Stubbs, ibid., p. 582, Cap. VII.

[6] See Haddan and Stubbs, ibid., pp. 572 sqq.

[7] Haddan and Stubbs, ibid., p. 575, note *b*. Instances of bargains for a term of three lives occur in Domesday Book: Cunningham, ibid., p. 24, note 1.

In later centuries and in a more developed form the monastic bodies made frequent use of the life-annuity contract in order to raise money.[1] There is a very interesting record of one made in 1308 between the Abbot of St. Denis and the Archbishop of Bremen, which, apart from serving as a commentary on human nature, indicates the wagering spirit which probably was present in most of such transactions. The Archbishop, by the payment of a sum of 2,400 livres Paris to the Abbey, acquired the right to an annuity for life of 400 livres, payable in half-yearly instalments. Incidentally there was a condition that in the event of his death within two years, a certain refund was to be made to his executors. Contrary, it would seem, to all expectations of the Abbot, the Archbishop lived till 1327, and the feelings of the former on the point may be inferred from the fact that in 1323 he contested the contract, though unsuccessfully, on the ground that it was usurious and therefore not binding.[2]

In addition to those granted by monasteries, there were occasional annuities paid by private individuals and by gilds. For instance, in 1453 a gild sells a yearly rent of two pounds for two generations, being a charge upon the gild property,[3] as similarly the rent-charges paid by towns were held to attach to the town hall, as representative of the town property.[4] From the end of the thirteenth century, however, it was specially by public bodies that they were employed. Governments of states and towns alike not only saw, or thought they saw, in them a convenient means for helping their finances in general, but found the sale of perpetual

[1] Blumhardt, *Einfluss des kanonischen Wucherverbots*, pp. 77–9.
[2] See *Abt von St. Denis*, pp. 7–10.
[3] Schmoller, *Strassburger Tucher- und Weberzunft*, pp. 72–4.
[4] Stobbe, *Beiträge zur Geschichte des deutschen Rechts*, p. 31.

and life-rents—the latter at times in the form of an office for life—to be a useful method for procuring ready money.[1] In Augsburg they wanted to free themselves from Jewish usurers;[2] in other places perhaps the ravages of fire or war or famine were being acutely felt. Many towns, in fact, considered the business of life-rents so valuable, that they forbade the exercise of it by private persons,[3] an interesting example of which is to be found in the ordinances of Brunswick of 1350: "We Lifgeding kopen wil, de scal it kopen van deme rade unde anders nergen, he en do it mit des rades vulborde."[4] Possibly there was also present a more altruistic motive. The position of the annuitant (particularly if the case was one of an arrangement entered into with his heirs) who was living longer than he was expected to by the seller of the annuity, and who had conceivably sunk the whole or the bulk of his capital to purchase it, was no very enviable one—perhaps even no very secure one—where the seller was a private person.[5] On the other hand, even the seller ran the risk of unpleasantness now and again. For instance, when in 1372 the Nuremberg Council sold a life-rent to Heinrich vom Stain for 6,000 gulden, the worthy burghers found themselves in trouble with his brother Hilpolt, whose hopes of coming into Heinrich's money were thus shattered.[6] It is, therefore, not without interest to find the same town a few years afterwards making it a rule that thenceforward life-rents were not to be sold to the

[1] Stobbe, *Beiträge zur Geschichte des deutschen Rechts*, pp. 28, 29.
[2] Hüllmann, *Staedtewesen des Mittelalters*, iv. p. 125.
[3] Stobbe, Ibid., p. 31; Neumann, *Geschichte des Wuchers*, pp. 397, 398.
[4] Neumann, ibid., p. 398.
[5] Neumann, ibid., p. 397.
[6] Hüllmann, ibid., pp. 125, 126; Roth, *Geschichte des Nürnbergischen Handels*, i. p. 65.

clergy, with the object of preventing their savings from being thus drawn away from the family.[1]

The payment of life-annuities, then, particularly by town authorities, was a considerably developed institution as early at least as the fourteenth century.[2] There were many varieties.[3] Frequently it happened that two or more persons together received a life-rent, particularly a married couple or a number of brothers and sisters. Sometimes, in the case of a married pair, the interest in the contract of the one who died first descended to the children, as laid down, for example, in the law of the town of Hamburg;[4] in other cases the husband's interest, in the event of his dying first, passed to the wife, who thenceforward drew the whole amount, and vice versa.[5] A similar arrangement is found already in the fourteenth century, in contracts where the persons were not necessarily even known to each other, or necessarily confined in number to two,[6] and thus long before Tonti there were "tontines."[7] In the Berlin records of the year 1401, for example, we are told of the Council selling an annuity to three persons, with the condition: "Welk den lengist levet nach dem andern, dem sullen wi unde wollen geven u, betalen dy . . . drye schok renten."[8] At other times, apparently, an annuity for a given amount was held successively, reverting, for instance, at the death of the original holder to his heir, and

[1] Ordinance of the Council, 1386: Hüllmann, *Staedtewesen des Mittelalters*, iv. p. 127; Siebenkees, *Materialien zur Nürnbergischen Geschichte*, i. p. 208.

[2] Stobbe, *Beiträge zur Geschichte des deutschen Rechts*, p. 26. Cf. *Abt von St. Denis*, pp. 3 sqq.

[3] Neumann, *Geschichte des Wuchers*, p. 398; Stobbe, ibid., pp. 32–5.

[4] Stobbe, ibid., p. 33. [5] Stobbe, ibid., p. 34.

[6] Stobbe, ibid., p. 35; Neumann, ibid., pp. 398, 399, and 399, note 1.

[7] Neumann, ibid., p. 243. [8] Stobbe, ibid., p. 35.

perhaps at his death to another, as was practised in Ratisbon since 1323.[1]

Nor must it be assumed that there was never any discrimination in the granting of these early life-rents based upon the ages of the purchasers. To suggest the possibility of there not having been such seems almost ridiculous, until we remember that even in the seventeenth century the Dutch Government was raising money on life-annuities without making any distinction, and with the not unnatural consequence that it became common in Holland to invest money on the lives of any young people who showed promise of longevity.[2] Small wonder then, if in those remoter times the same mistake was frequently made; smaller wonder if, when it was avoided, the discrimination was clumsy and inadequate. In Lübeck the numerous contracts of the end of the thirteenth century show a fixed ratio between annuity and capital of 1 : 10, nor does there appear to have been any account taken of age at Nuremberg during the following century, where a ratio of 1 : 9 was general. It was taken into consideration, on the other hand, in Hanover, in the middle of that century; by a statute of 1350 Nordhausen gave 1 mark for 10 to persons between 40 and 50, 1 mark for 8 to persons between 50 and 60; in Augsburg the question of age was recognised by an ordinance of 1373; in Breslau during the period 1342–79 the ratio varied between 1 : 4 and 1 : 10, age being presumably a deciding factor; and so on.[3] It must, of course, be borne in mind how great the obstacles were in

[1] Hüllmann, *Staedtewesen des Mittelalters*, iv. pp. 124, 125. See also Gemeiner, *Regensburgische Chronik*, i. p. 533.

[2] See Brämer, *Versicherungswesen*, p. 77; also Walford, art. "Annuities on Lives, History of," *Insurance Cyclopædia*, i. p. 102.

[3] Stobbe, *Beiträge zur Geschichte des deutschen Rechts*, pp. 27, 28; Neumann, *Geschichte des Wuchers*, p. 259.

early days in the way of forming any satisfactory estimate of the duration of human life. It is only since the end of the sixteenth century that it became general amongst the clergy to keep any records of births and deaths, and only in the second part of the following century did these Church records begin to be utilised for the purposes of statistics.

It is not our object to give a detailed history of life-annuities. Little by little the principle of association came to be applied to them, very imperfectly (often, doubtless, hardly at all) in the montes, and certainly more perfectly in the tontines. The issue of life-rents as a form of State loan was much resorted to. Reference has already been made to Holland, for example, where the practice was much in vogue in the second half of the seventeenth century. In England [1] during the late seventeenth and early eighteenth centuries there were large borrowings upon annuities for a term of years. In the closing decade of the seventeenth century an Act was passed for the floating of a loan of a million against life-annuities, at 14 per cent., or little more than seven years' purchase, and in the early years of the eighteenth century also money was raised upon life-annuities on various occasions. In the wars of the middle of the eighteenth century, on the other hand, little money was borrowed either upon annuities for lives or for term of years, most people preferring perpetual annuities as a means of investment; and the former were seldom granted except by way of premium to the subscribers of a new loan. In France about the same time, for reasons into which we need not here enter,[2] the proportion of the public debt consisting in life-annuities was much greater than in England.

[1] See Adam Smith, *Wealth of Nations*, ii. pp. 402 sqq.
[2] See Adam Smith, ibid., pp. 404, 405.

CHAPTER XIV

RENTS OR ANNUITIES: SOME SPECIAL FORMS

IT is intended in the present chapter to draw attention to three special forms in which life-rents have been paid.

Arrangements, first of all, whereby persons of advancing years made over their property to the eldest son, less frequently to several of the children or to others, in return for maintenance during the remainder of life, are met with from early times, and have perhaps existed also in all societies.[1] The exact obligations incurred have of course varied very much according to the customs of particular districts, and, within those districts, according to the circumstances of individual cases, and sometimes bound the incomer to provide not only for the retiring owner during his lifetime but also for some or other of his family during theirs. But the reasons which have led to the making of such arrangements will always have been pretty much the same—the discovery, perhaps, of the intolerable burden of any longer managing affairs, or, under feudalism, of physical unfitness to continue to comply with the claims of the over-lord; perhaps an anxiety to give to the heir a long-awaited oppor-

[1] Brämer, *Versicherungswesen*, p. 76; Stobbe, *Beiträge zur Geschichte des deutschen Rechts*, p. 25; Miaskowski, *Allenteil*, pp. 267–9. There is a reference to it in the Lex Saxonum, § 62: Stobbe, ibid., p. 25, note 2.

tunity to step into active control, even a growing sense that harmonious relations might best be furthered by not trying his patience any longer.

Originally the device was common only amongst the peasant class, but in the later Middle Ages we find it amongst the citizen class also. Now, however, it does not so much take the form of a general responsibility to keep and care for the retiring owner; the obligation entered upon begins to be more carefully defined, and sometimes is a specific yearly payment. For instance, according to a Lübeck contract of 1357, a father hands over all his goods to his son, who undertakes the father's debts and his maintenance, and agrees that in the event of dissatisfaction definite money payments shall be made.[1]

The plan had its good side and its bad. To take the most common case, that of agriculture, as an example, it must be deemed no small advantage if by the process you had young strength coming in when the old began to fail, stagnation being thus avoided, as well as what would too often have led to discontent. The disadvantages are, perhaps, no less weighty, however. It was small gain to avoid stagnation in one direction if you were only to run up against it in another, and so long as the provision arranged for had to be furnished in kind, there was the danger of the necessity for producing certain articles interfering with the making of changes which were economically desirable. More likely to be keenly felt was the cramping effect produced on credit, enterprise, and justifiable speculation, both by the lack of means after meeting the ever-recurring obligation, as well as by the need to consider the security of the outgoer. Added to this there was the danger of the peasant, for instance, handing

[1] Stobbe, *Beiträge zur Geschichte des deutschen Rechts*, pp. 25, 26.

over his little holding before he was past working it himself, and thus laying a very heavy burden on his successor (a burden which the land could barely support), at the same time, perhaps, leading the latter to a marriage which he would have done better to defer, and which otherwise he would have deferred as a matter of course. Finally, in escaping unpleasantness by making such an arrangement you also ran the risk of stirring it up: the interpretation and fulfilment of the conditions provided a fruitful source of trouble.[1]

Leaving behind these conflicting advantages and disadvantages as perhaps not very essential to our subject, we turn to a second and more peculiar form under which, especially in Italy but also in France and the Netherlands, the payment of life-rents took place, that of the *societas sacri officii*.[2] The occasion for these societies was the system of saleable offices of the Curia Romana, of which there was a great number. It was, of course, to the interest of the papal finances to get as high a price as possible for them, and the popes permitted the clubbing together of several persons for the purpose of acquiring one or other of them, when individual means proved insufficient. Incidentally, the candidate was thus also kept out of the clutches of the usurer. Naturally only one could hold the office, but the others, who had shared in the cost of purchasing it, could and did share in the income it yielded, in proportion to their contributions.

Associations of this kind were in existence at any rate as early as Leo X., for he passed an ordinance in 1514 for their regulation, which was followed by

[1] For above, see Miaskowski, *Altenteil*, pp. 269, 270.

[2] See Cohn, *System der Nationalökonomie*, iii. pp. 647, 648; Blumhardt, *Einfluss des kanonischen Wucherverbots*, pp. 76, 77; Neumann, *Geschichte des Wuchers*, pp. 456–8; Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. pp. 411–20.

further statutes under Paul IV. and Pius IV. in 1555 and 1560 respectively. The societies had meanwhile departed from their original character and were becoming very largely speculative. The holder of an office would start a society to acquire capital for any purpose whatsoever; or one would be formed by some person who neither had nor wished to have an office, but who was equally desirous to have capital and who was willing to pay some office-holder to allow his name to be put forward. The extent to which the latter practice extended is shown by this fact: up to the time of Pius IV. it was sought to exercise a control by requiring a concession from the Pope for any new foundations of this kind; afterwards apparently the decision was left, within limits, to the consciences of the founders. In applying for this permission it had to be stated what societies and to what amount the office-holder had already either formed himself or allowed others to form.

In the end, offices which yielded no profits were made to serve, or indeed the use of any office at all was dispensed with, and the mere employment of the name *societas sacri officii* made to cover up deficiencies. The legislation of Paul IV. was intended to confine the societies, in fact as well as in name, to the offices of the Curia Romana, and after the abolition of the concession referred to above, certain restrictive and directive measures were introduced, specially with a view to securing a connection between some actual office and the rents paid to the depositors of capital. The forming of several societies on the same office, however, was allowed, even when the income derived from it was not adequate to go round them all, whilst the system of borrowing the name of an office-holder was virtually recognised.

The attraction in it all to the founder of the

societas sacri officii is obvious: he obtained capital without usury[1]—for it was no loan. The attraction on the other side lay in the rent given, which was some 8 to 12 per cent. The contract, as it was originally, took the following form. The depositor handed over his sum of money to an office-seeker (or an office-holder) *super periculo vitæ ejus* or else *cujuslibet alterius*. The latter promised to make him a sharer in the income from the office, and to pay back the capital in case the person on whose life the amount was placed should still be alive at the close of the society; should he die in the meantime, the sum was forfeited. In Rome and the Papal States the societies were mostly for a given period, as a rule six months, but there were also those without time-limit.[2] Upon loss of office, or death of the receiver of the money, he or his heirs at once became liable for its return. Offices, it may be observed, were sold only for the lifetime of the reigning pope, so that his successor might not be deprived of the benefit attaching to the disposal of them.

The condition that there should be no return of capital in the event of the depositor, or the person on whose life it was placed, dying before the termination of the society, though probably at the first introduced quite by chance, apparently came to be regarded as an essential of the contract. Perhaps this was not least because by such means higher rents could be paid, and the selling-price of the office was raised.

By the eighteenth century the *societas sacri officii* had seemingly disappeared.[3]

[1] Certainly the question of usury might arise here, but the supporters of the arrangement knew how to explain it on other grounds: Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, pp. 415 sqq.

[2] Subject to fifteen days' notice: Endemann, ibid., p. 415.

[3] Endemann, ibid., p. 412.

Our third and last form is that under which the personal annuity appears to have been most common in England in earlier times,[1] namely, the corody. A corody (or corrody)[2] was originally the right to free quarters due from a vassal to a lord on his circuit, but in the sense in which we are concerned with it, *i.e.*, in its later and more common application, it was the right, conferred by a religious house, to certain periodical grants as well as to certain privileges. Sir John Fortescue, who lived in the fifteenth century, gives a definition of it in his legal judgments: "Si un ad un corody deins un Meason de Religion, scavoir, d'aver certeines messes de chair, pain, servois, fuel, chambre, et un estable pur ses chevals."[3] Naturally the actual form of the grant varied very much according to arrangement; the quality or quantity of the provision, as well as the dates when it was to be rendered, were carefully defined, and in many cases there were elaborate documents drawn up. It is common, however, to find a specified daily allowance from the refectory of bread, ale, pulse, meat or fish, and (with frequently the alternative of a money payment) periodical supplies for the larder, such as eggs, herrings, pigs, cows, oxen; in some cases there was permission to sell during absence. Straw for the chamber and bed, fodder for the horse, fuel and candles were frequently provided, often a robe or

[1] Pollock and Maitland, *History of English Law*, ii. p 133.

[2] See Pollock and Maitland, ibid., pp. 134, 135; *Encyclopædia of the Laws of England*, iii. p. 672; Plummer, *Fortescue's Governance of England*, pp. 153, 154, 337–9; *Winchcombe Landboc*, i. note 1 of p. 344 (on pp. 344, 345); *Compotus Rolls of St. Swithun's Priory*, pp. 22–5, 82, 159–70, 259 note 2, 489; *Register of Worcester Priory*, pp. cxxiv, cxxv; *Compotus Rolls of the Priory of Worcester*, p. xi. As to the word itself, see *Consuetudinary of the Fourteenth Century*, p. 46.

[3] Plummer, ibid., p. 338.

some other article of dress, or material to make it. Sometimes there was a room in the monastery at the disposal of the receiver of the corody, with perhaps a chapel and a cellar, fare for his groom or page, stabling for his horse or pasture for a cow, or the use of one of the convent's horses. Sometimes a substantial part of the grant was a periodical money payment; or there might be a commutation of the whole for a periodical money payment.[1]

Corodies were granted for various reasons.[2] Sometimes it was the king[3] or the prince[4] who signified the wish that a royal chaplain should be given a corody by a house of royal foundation to maintain him until promoted to a benefice, or that one should be given to a faithful servant or officer, a cheap mode of recompense. A non-royal founder would do likewise. It may be noted in passing that exemption was sometimes granted to houses of royal foundation from this doubtless onerous burden.[5] This had the unfortunate consequence, of which frequent complaint was made in Parliament, of inducing houses to represent themselves falsely as being of royal foundation, to petition for and purchase exemption likewise, and thereupon to repudiate their existing annuities, for some of which

[1] See, *e.g.*, a corody to Elias de Gayton in 1313: *Winchcombe Landboc*, i. pp. 317–19. Cf. *Rolls of Parliament*, v. p. 186: 28 Henry VI.

[2] *Rolls of Parliament*, iv. p. 104: 4 Henry V. c. 28: "as ascunes persones pur lour bon & longe service; ascuns, pur lour deniers a eux paiez devant la main; & a ascuns, pur diverses autres causes."

[3] See, *e.g.*, *Winchcombe Landboc*, i. pp. 297 (1316, on the creation of a new Abbot), 313, 314 (1310), 337, 338 (1320), 358, 359 (1327).

[4] See, *e.g.*, *Winchcombe Landboc*, i. p. 296 (1307). On pp. 351, 352 there is record of a corody granted in 1323 at the instant request of Lord John de Trillowe.

[5] *E.g.*, *Rolls of Parliament*, v. pp. 74, 75: 23 Henry VI. c. 20.

they had doubtless taken payment.[1] Sometimes the corody was given voluntarily, with the object of conciliating great men and their followers;[2] sometimes it was the retaining fee of some distinguished canonist; or the House chose this way of rewarding the services, past, present, or future, of one of its servants—its agent, steward, chamberlain, or what not.[3]

But the fact of special interest to us is that it frequently happened that the corody was the subject of sale and purchase; in fact, very often it was simply a form of life-annuity, though there was the legal distinction that it "issued out of" a fixed place, whilst the mere personal annuity was regarded as issuing from the grantor's "chamber."[4] A monastery or abbey in financial straits would resort to this means of procuring funds to tide over its difficulties. For instance, the thirteenth century proved very disastrous to St. Swithun's Priory at Winchester, and the records of the early part of the following century reveal the efforts made to raise capital, among other methods by the sale of corodies.[5] They were often charged on some of the special funds which provided the prior with the means out of which he made the periodical doles,[6] and were granted to persons of wealth who

[1] Plummer, *Fortescue's Governance of England*, p. 339; *Register of Worcester Priory*, pp. cxxiv, cxxv; *Rolls of Parliament*, iii. pp. 469, 470: 2 Henry IV. c. 58, and p. 520: 4 Henry IV.; ibid., iv. p. 104: 4 Henry V.

[2] Or under compulsion. See, *e.g.*, *Rolls of Parliament*, vi. pp. 388, 389: 3 Henry VII. c. 5.

[3] See, *e.g.*, *Winchcombe Landboc*, i. pp. 136–8 (1278), 262–5 (1350, for past and future benefits and advice), 279, 280 (1317), 341, 342 (1321), 352–4 (1324, for cis- and trans-marine services, and mindful of a sum of money and other benefits received).

[4] See Pollock and Maitland, *History of English Law*, ii. pp. 134, 135.

[5] See *Compotus Rolls of St. Swithun's Priory*, pp. 18, 22, 23.

[6] *Compotus Rolls of St. Swithun's Priory*, p. 23.

could afford to pay well. Thus, according to the Hordarian's Rolls, 1327–34, my Lord William of Illebone made over to the House a messuage at Drayton in Barton Stacey parish, a fishpool on the river, three acres of meadowland, a pasture, a small piece of open land, and a virgate of land in Drayton, in return for which he was to receive yearly £10 in money, a robe (10 ells of cloth), two furs, and two capes of budge, three loads of hay, two of straw, three quarters of oats, and two cart-loads of brushwood. The closing entry of the deal occurs in 1334, and is as follows: "Paid to my Lord William of Illebone for three loads of hay, two of litter, three quarters of oats, and two loads of brushwood, £1 7 6; and nothing more of the Corrody or Robe this year, because he is dead." [1] A few years later [2] we find the House selling three corodies, this time receiving payment in cash. They stand in the Roll of Nicholas Heywode, the Prior's Receiver, thus:—

John of Brightwelle	£45 [3]
Nicholas of Hampton, Clerk (in part payment)...	£10 [4]
John Iwon (in part payment)	£15
	£70

The worthy Receiver, it is of interest to note, placed these capital sums (which we may multiply by twelve or more to express in terms of present-day value) to annual account, whilst at the same

[1] See *Compotus Rolls of St. Swithun's Priory*, pp. 23, 24, 159.

[2] Roll of 1337–8, see *Compotus Rolls of St. Swithun's Priory*, p. 24. Among other receipts of the Cellarer's (or Bursar's) account of the Priory of Worcester for 1376–7 may be noticed certain sums paid as purchase-money for corodies: *Compotus Rolls of the Priory of Worcester*, see p. xi.

[3] For particulars, see *Compotus Rolls of St. Swithun's Priory*, p. 161.

[4] For particulars, see *Compotus Rolls of St. Swithun's Priory*, pp. 160, 161.

time burdening the future with life-payments.[1] This is an example of the unsatisfactory nature of such transactions, for even had a reserve been made in the accounts, it could only have been based on the merest guess-work, and there was no means of forecasting whether there would be ultimate gain or loss. It is enlightening to find in the records of St. Albans how the accountant "manifests great glee" over two cases, where estates had been handed to the monastery in return for corodies for life and the receivers of the corodies only survived the bargain for two or three years.[2] On the other hand, the revenues were sometimes so depleted by these grants that request had to be made to the king in Parliament for relief.[3]

We have looked at the causes which very frequently led the religious house to become a party to the sale of a corody; on the other side, the desire to make provision for old age or to be free from the burdens of active life, or other causes,[4] would lead many to make gladly a substantial present payment, in money,[5] in land,[6] or in both,[7]

[1] See *Compotus Rolls of St. Swithun's Priory*, p. 245, note 1.

[2] Plummer, *Fortescue's Governance of England*, p. 339.

[3] Plummer, ibid., p. 339. See, *e.g.*, *Rolls of Parliament*, v. p. 206 : 28 Henry VI.

[4] The form of the corody-deed at times almost recalls the first of the three species of life-rent dealt with in this chapter. Cf. *Winchcombe Landboc*, i. pp. 279, 280 (1317).

[5] See, *e.g.*, *Winchcombe Landboc*, i. pp. 124 (1276, for 55 marks), 298–300 (1307, for 40 marks, and the receiver of the corody binds himself on oath to fidelity and aid), 329–31 (1317, for 140 marks), 333–6 (1320, for past benefits and for 140 marks paid down), 343, 344 (1322); *Compotus Rolls of St. Swithun's Priory*, pp. 159 (1330), 162 (1343).

[6] See, *e.g.*, *Winchcombe Landboc*, i. pp. 129 (1271, for all his land), 210 (? 1200).

[7] See, *e.g.*, *Winchcombe Landboc*, i. pp. 36 (? 1200, for certain land and 10 marks), 124–6 (1278, for land in Sherborne and 100 marks).

in order to have a well-defined provision for the remainder of life guaranteed by so weighty an institution as the monastery or abbey.[1] Some were issued jointly to more persons than one,[2] not infrequently to a man and his wife, subject to certain re-arrangement to come into operation on the death of one or other,[3] and among many interesting occurrences of the corody may be mentioned a case where, in the event of the death of the corody-holder within the first five years, the house was to find a chaplain "to celebrate for her soul, one whole year."[4]

Since the Reformation corodies have ceased to exist.[5]

[1] We have seen that this confidence was liable, at times, to be rudely shaken: above, pp. 183–4.

[2] See, *e.g.*, *Compotus Rolls of St. Swithun's Priory*, p. 162 (1343).

[3] See, *e.g.*, *Winchcombe Landboc*, i. pp. 124 (1276), 129 (1271), for which also cf. ii. pp. 322, 323. For a quite different form of corody, see *Compotus Rolls of St. Swithun's Priory*, pp. 169, 170 (1326), where the corody-receivers were to make yearly money payments.

[4] *Winchcombe Landboc*, i. pp. 329–31 (1317). Cf. pp. 361, 362 (1328).

[5] *Encyclopædia of the Laws of England*, iii. p. 672.

CHAPTER XV

THE MONTES

IN the course of our opening remarks it was noted that "from early times in its history, insurance has been more or less intimately connected with loans." The statement had no reference to what is to occupy our attention in the present chapter, but none the less it is an interesting coincidence that the insurance-like arrangements which we shall meet with here came as the result of a desire, on the one hand, to raise loans, and, on the other, to make loans. Whether true insurance is in question is another matter. We are not in possession of sufficient evidence to enable us to say if the transaction of such business by individual *montes* was on a scale extensive enough to provide an "insurance group." Sometimes it may have been; very often, of course, it was not.

The term Mons,[1] in the sense in which we are concerned with it, came into general use in the sixteenth century.[2] It was employed of the mass-

[1] As to the *montes*, see Funk, *Geschichte des kirchlichen Zinsverbotes*, pp. 48 sqq.; Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. pp. 431 sqq.; Ashley, *Introduction to English Economic History and Theory*, I. ii. pp. 447–9; Hallam, *View of the State of Europe during the Middle Ages*, iii. pp. 340, 341; Below, *Wucher*, p. 1362; Beckmann, *History of Inventions*, iii. pp. 19, 20.

[2] Ashley, ibid., p. 448.

ing together of sums of money contributed by various persons to form a loan to the State, or in Italy mostly to the town. As early as the twelfth century, the republic of Venice, exhausted by continued wars and sorely in need of money, resorted to a forced loan, an example which did not pass unobserved in other parts of Italy. Florence, Genoa, Rome, and Naples were not slow to follow, and in the thirteenth and fourteenth centuries the practice was no longer unusual. To allay discontent it became customary to make to the lenders an annual money payment, and to meet any scruples on the score of the doctrine of usury, this was stated to be remuneration for loss or for services, and, moreover, to be granted gratuitously![1] Nor was the practice by any means confined to forced loans. Voluntary loans began to be invited for similar purposes, and the same procedure was adopted in regard to them also.

It must not be supposed that such subterfuges were permitted to pass without question. There prevailed during the fourteenth and fifteenth centuries much difference of opinion, and there was much disputing as to the right and wrong of the matter. Like the controversy which arose later over the *montes pietatis*, this too was very much one between various orders of monks: the Dominicans and Franciscans defended the practice, whilst the Augustinians opposed it. Probably the weight of opinion was in favour of it. The rate of interest paid varied according to place and circumstances. Florence, for example, paid her creditors 5 per cent. about the year 1380; in earlier times it had been as high as 15 per cent.[2]

[1] Below, *Wucher*, p. 1362; Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. p. 433; Funk, *Geschichte des kirchlichen Zinsverbotes*, p. 49.

[2] Endemann, ibid., p. 433; Funk, ibid., p. 49.

And thus the institution of the *mons* spread throughout Italy; everywhere the experience gained was put to account in the floating of new public loans. In the sixteenth and seventeenth centuries the popes themselves made frequent use of this mode of raising money.[1] What the pontiff did was also allowed to numbers of religious bodies, and what the temporal powers permitted to themselves was also permitted to others, not excluding private persons of importance. It was specially in Italy that the business prevailed, and above all in that part of Italy under the papal government.

But not only did this system of loans develop in extent; it also developed in complexity, and herein lies its special interest for us. It very soon passed beyond the stage of paying what was simply interest under ingenious pseudonyms, and the alternatives which were offered bring us at least into the neighbourhood of insurance. Thus, in addition to the rents payable until reimbursement of the capital (*montes vacabiles*)—we avoid the incriminating term "interest"—it was possible to purchase rents to cease at death, when the capital also was extinguished (*montes vacabiles*)—in other words, what we should call life-annuities. Sometimes the rent was redeemable by the borrower (*montes redimibles*), sometimes not. As a special kind of the *montes vacabiles* was to be found the life-annuity, with an arrangement by which the rent of a deceased holder went to swell that of the survivors in a certain group, an idea which we shall come across again hereafter.

Into the question of the development of the great deposit banks and their connection with the *montes* we need not enter. Suffice it to remark that with

[1] See Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i., pp. 436, 437.

the weakening of the doctrine of usury the activities of the *montes* became more and more those of banking houses, into which in many cases they were ultimately transformed.[1]

Equally important for our purpose, and perhaps better known, are the *montes pietatis*.[2] Their history is interesting. They were formed by the Church with the object of making it possible for those in need of money (not necessarily the poor, in the strict sense) to contract loans against the security of pledge or pawn, without thereby breaking the usury laws. At the same time, the desire was present of saving such from the none too gentle hands of the professional usurer.[3] Like the institution we have just left, they found their origin in Italy. Later, it is true, they took on a mercenary spirit. From them developed lending and financial houses carried on purely for the sake of gain, and, indeed, in the end *montes pietatis* and *montes profani* came to be, to some extent, hardly distinguishable.[4] But at the beginning it seems to be generally agreed that they had a good effect, and that, as an old writer puts it, they were "profitable,

[1] See Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. pp. 431, 433, 445–9, 460.

[2] See Marperger, "Montes Pietatis," *Troisième Encyclopédie théologique*, viii. pp. 1680 sqq.; Ashley, *Introduction to English Economic History and Theory*, I. ii. pp. 447 sqq.; Funk, *Geschichte des Kirchlichen Zinsverbotes*, pp. 51 sqq.; Endemann, ibid., pp. 460 sqq.; Beckmann, *History of Inventions*, iii. pp. 11 sqq.; Neumann, *Geschichte des Wuchers*, pp. 412 sqq.; Ratzinger, *Geschichte der Kirchlichen Armenpflege*, pp. 402, 403.

[3] Roscher, *Principles of Political Economy*, ii. p. 143, note 5: in Florence in 1495, after the Jews had been expelled, voluntary contributions were made to set up a municipal loaning-house. See also Beckmann, *History of Inventions*, iii. pp. 21, 22, 44.

[4] Neumann, ibid., p. 419; Endemann, ibid., pp. 463, 470, 471.

honest, and charitable, and invented to ease the poore." [1]

The original intention, then, was not to distribute alms, but to lend to those who required assistance, for business or other purposes, small amounts for limited periods, usually not exceeding a year. In the event of failure to make repayment, the security could always be realised upon. There was to be a small payment for the privilege of borrowing, due monthly, so small, however, as simply to cover the costs of managing and running the concern generally. Considerations of charity, of expediency in face of public opinion on the usury question, dictated such a course, no less than the papal mandate which laid down that expenses were to be kept moderate and any profit to go to the benefit of the institution.

But whence, it will be asked, were to come the not inconsiderable funds necessary to the carrying out of such a design? With not less than their share of optimism, and no small degree of faith in human nature, the original projectors hoped to obtain the needed capital, partly by the goodwill of the authorities through the public funds, partly by the goodwill of the public by voluntary contributions and voluntary unremunerated service. They did not find, however, the response they had looked for; as frequently happens, there were fewer people willing to give than to take, and difficulty was before long experienced in finding the wherewithal to make the loans applied for. Certainly the Church could not blame itself for slackness in the matter; every effort was made to bring about the desired result. From the first it did not fail

[1] Bodin, *Six Bookes of a Commonweale*, p. 672. See also Ashley, *Introduction to English Economic History and Theory*, I. ii. pp. 449, 450; Funk, *Geschichte des kirchlichen Zinsversbotes*, p. 53; Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. p. 463.

in pressing home the moral, and when exhortation and appeal proved fruitless, and even the promise of spiritual advantages remained without effect, material ones were forthcoming. Academic honours, relief for illegitimate children from disabilities of various kinds, and other tempting benefits which the Church had it in its power to bestow, were held out as inducements to those who would come forward with their means to aid in the good cause.[1] Finally, when even these had proved unavailing, recourse must be had to a more practical method. It was announced that remuneration would be given upon any sums of money deposited, and this remuneration was justified, for the quieting of tender consciences, under the fiction of payment for services, for changing or transport of the money.[2] Had not the earlier *montes* shown the way?

We may leave them for the moment accepting their deposits and making payments to their depositors for freight, exchange, or services as the case might be, and briefly look at their actual rise and the way in which they were regarded. The first of the *montes pietatis*[3] was that of Orvieto, founded by the Cardinal of Ostia in 1463. That of Perugia, with more complete organisation, followed four years later, and there were added in quick succession Viterbo 1472, Savona 1479, Assisi 1485, Mantua 1486, Cesena and Parma 1488, Lucca and Interamna 1489, Verona 1490, and Padua, Piacenza,

[1] *E.g.*, by a bull of Sixtus IV., 1497: Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. p. 462. See also Beckmann, *History of Inventions*, iii. pp. 14, 15.

[2] Below, *Wucher*, pp. 1362, 1363; Neumann, *Geschichte des Wuchers*, pp. 412–14.

[3] There would appear to have been efforts to form something of the kind prior to the fifteenth century, but without apparent success: see *Troisième Encyclopédie théologique*, viii. p. 1684. Cf. Beckmann, ibid., pp. 13, 14.

and Ravenna 1491. The *montes pietatis* never, apparently, took root in England,[1] and in Germany the lending-houses set up by princes and magistrates owed their origin more to political and economic motives than to religious considerations.[2]

Despite the fact that the *montes pietatis* arose under the eyes of the popes and with their approval and sanction, there was no lack of opposition to them, on the ground that they were contrary to right doctrine. On this occasion the Franciscans, who were almost entirely responsible for the early movement, found themselves in opposition to the Dominicans, who led the assault, of whom Thomas de Vio may be mentioned as taking a prominent part.[3] The attacks were not altogether without effect, and in some houses, at any rate, the Franciscans attempted to give free loans. Bernhardin of Feltre, however, declared himself against such a course as liable to imperil the whole usefulness of the institution; the chief members of the Order supported his view, and in 1498 the General Chapter decided that everywhere a charge should be made, without exception. The discord was not likely to be put to rest by this decision, and in the end the matter was brought before the Lateran Council of 1515 under Leo X. The Council gave its verdict in favour of a moderate rate of interest to defray the expenses of carrying on the business, and a new definition of usury was given in the spirit of the decision,[4] against which it was forbidden to write or speak, under pain of

[1] Ashley, *Introduction to English Economic History and Theory*, I. ii. p. 447. See above, p. 193, note 3.

[2] Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. p. 464; Ratzinger, *Geschichte der Kirchlichen Armenpflege*, p. 403.

[3] As to the standpoint of the opposition, see Ashley, ibid., pp. 450, 451. See also Endemann, ibid., pp. 464–70.

[4] See Funk, *Geschichte des kirchlichen Zinsverbotes*, p. 53.

excommunication. An end was thus put to any further open opposition on the part of the Dominicans.

The interest which the *montes pietatis* could now charge without any further misgivings, not only varied according to the cost of management, but depended largely on the extent to which deposits had to be remunerated; and, as we have already seen, this procedure had become virtually necessary if funds were to be procured at all. Some 10 to 15 per cent. per annum was not unusual.[1] At the same time the amount which could be paid upon deposits was liable to be fluctuating and uncertain; and so, as in the case of the earlier montes, here also new means of attracting capital had to be adopted. To offer life-annuities in exchange for sums paid in was an obvious step;[2] but the *montes pietatis*, by way of alternative, promised to those who were willing to allow their deposits to remain for a certain number of years free of interest several times the original sum at the end of the period. Thus it became possible in Italy (afterwards also in Germany) for a father, on the birth of a daughter, to deposit an amount for dowry, and to hand over to her ten times that sum on her marriage. She could not marry before her eighteenth year without forfeiting the sum to a younger sister if there happened to be one, and, failing such, to the institution itself. In the event of death before that age the same rule applied.[3]

[1] Neumann, *Geschichte des Wuchers*, p. 414; Endemann, *Studien in der Romanisch-kanonistischen Wirthschafts- und Rechtslehre*, i. p. 463; Ratzinger, *Geschichte der Kirchlichen Armenpflege*, p. 403.

[2] Neumann, ibid., p. 419.

[3] Neumann, ibid., p. 414; Bodin, *Six Bookes of a Commonweale*, p. 672.

CHAPTER XVI

GAMBLING INSURANCE

WHETHER Gambling Insurance,[1] as we may term it, has contributed more to the development or to the retardation of true insurance is a nice question. Like the tontine system, which we shall shortly discuss, it had a sphere of influence which from a mere geographical standpoint, to ignore everything else, was a wide one. Like that system, too, by its excesses it called down upon its own head legislation of which the indirect consequences could not fail to be hurtful. Both helped, both hindered. But tontine insurance was often true insurance; gambling insurance never could be.

Some contracts must be placed in the category of wagering,[2] for the reason alone that a pecuniary

[1] See Cohn, *System der Nationalökonomie*, p. 647; Goldschmidt, *Universalgeschichte des Handelsrechts*, p. 382 and note 147; Karup, *Theoretisch-praktisches Handbuch der Lebensversicherung*, pp. 7 sqq.; Manes, *Versicherungswesen*, p. 203; Gebauer, *Sogenannte Lebensversicherung*, pp. 60 sqq.; Ehrenberg, *Studien zur Entwicklungsgeschichte der Versicheruug*, II. ii. p. 124.

[2] We are not here concerned with legal terms according to which "a wager is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event," and life assurance is therefore wagering, equally with the purely sporting transaction: see Anson, *Law of Contract*, pp. 206 sqq. Cf., however, art. "Gaming (and Wagering)" in the *Encyclopædia of the Laws of England*, vol. vi.

interest in the happening or otherwise of the contingency which is the subject-matter of the contract is first created by the contract itself. If, for instance, A pays £10 to B, who, in consideration thereof, agrees to pay A £100 should C's ship (in which neither has a previous money interest) founder during a certain voyage, the compact is obviously nothing but a piece of gambling. But if it should be the case that A has goods to the value of £100 in C's ship, then, it might be asserted, the contract is one of insurance. But, after all, it always requires at least two to make a contract, and the position of both contracting parties must be taken into account. From the standpoint of A the arrangement undoubtedly partakes not at all of the nature of gambling: just as he must reckon in his outlay the expenditure of a certain sum to provide suitable packing to protect his merchandise from the effects of the weather, so he must also pay for the protection which he is able to purchase against the greater perils of the deep. Both items are included in the price which he will ultimately charge to his customer; in theory, at least, he stands neither to gain nor to lose whatever the outcome of the voyage may be.

What, then, about B? Apart from this artificial relationship into which he has entered with A, it is a matter of supreme indifference to him whether or not C's ship ever sees land again; he has primarily nothing at stake. But, for the chance of gaining £10, he is willing to run what doubtless he considers to be the remote risk of losing £100—he gambles, that is to say.

It might be argued with a semblance of truth that this is essentially the position which the guaranteeing party must always occupy. If it were so, the title of this chapter would be ob-

viously tautological. But the main achievement of insurance consists in having overcome this position. If you can persuade so many people to place in your hands the guaranteeing to them of the value of their property on the sea that you can depend upon the working of the law of averages within your group, you will be able to reckon with sufficient accuracy the charge you will have to make to each in order that, in the event of disaster to any, there may be enough in the treasury to meet their loss; enough in addition to furnish you with the ordinary profits attaching to any other kind of business undertaking of the same degree of risk. Naturally we have been working backwards, for theoretically the primary case would be found in the mutual combining of the owners of the ships, with the agreement that all should pay for the losses of each, on the principle "your turn to-day; mine to-morrow." The introduction of a third party to "undertake" in theory comes later, but the ground principle is the same in both cases.

And now turning our suppositional case to life assurance, we find that the same thing applies. It is not intended to discuss in these pages the nature of insurance, and whether or not life assurance can be regarded as a contract of indemnity, but, just as there are ships and cargoes in the preservation of which certain persons have a money interest, and the destruction of which means to them a money loss, so it is with lives of individuals. And if it has proved possible to forecast with "sufficient accuracy" how many ships making certain voyages will fail to reach their destinations in safety, it has been shown practicable to predict with amazing accuracy what proportion of human lives will find their destination at any given age. Our contract may be said, therefore, to cease to be a wager,

when in the first place there is a bona fide interest existing (independent of the contract) on the side of the one party, and in the second place a sufficiently large measure of association present to justify the other contracting party in counting upon the operation of the law of averages.

It was inevitable that the practice of covering maritime risks in the case of ships and cargo should lead men to the idea of entering into similar contracts with human life as the subject-matter. The transition was not so difficult. It was not a step from the insuring of one's cargo of cloth or spices to the insuring of one's cargo of slaves,[1] for both surely were merchandise; that the latter happened to be animate was merely incidental to their particular nature. But what if one should lose one's own life? That was assuredly a serious matter—infinitely more serious than that one's "goods" should be spoiled. What with the Turks and the pirates of Barbary and the rest, there was always danger enough, and the only hope of escape from death (or slavery—horrible thought) lay in a sufficiently large ransom being forthcoming at the right moment. And so it became common to pay a *premio* before setting out, which secured, according to circumstances, that a greater or smaller ransom should be forthcoming at the critical moment; and even if the marauders are not encountered, the voyage will have been undertaken with a more peaceful mind, for all the price may have been a heavy one.[2]

There is evidence of the extension of the principles of marine insurance to such purposes as these as early as the fourteenth century, and the particular

[1] Ehrenberg, *Versicherungsrecht*, pp. 28, 29, and p. 29, note 1; Bensa, *Histoire du Contrat d'Assurance*, p. 90.

[2] Pilgrims to Jerusalem or elsewhere could make similar arrangements: see *Le Guidon*, pp. 63, 64.

device referred to above seems to have been specially prevalent in the seventeenth century.[1] In the French Marine Ordinance of 1681 it is, for instance, expressly provided that "Mariners, passengers and others may insure the liberty of their persons; and in such a case the policy shall contain the name, country, place of abode, age and quality of the insured; the name of the vessel, port of departure and destination; the sum to be paid in case of capture, as well for the ransom as for the expenses of return; to whom the money shall be paid, and under what penalty."[2] The object was, of course, quite a legitimate one, but the practice, even had it fulfilled the second condition which we have laid down as essential to the existence of true insurance, certainly was not life insurance. Another transaction, however, of which we have record cannot even claim to be dignified by the term "legitimate." A man setting out on a voyage would deposit with another a certain sum of money on the understanding that if he failed to return, the money was to be retained; if he survived the perils of his journey, on the contrary, he was to be entitled to claim a considerably larger sum.[3]

That persons should thus gamble on their own lives was bad enough, but the custom grew up of making wagers, under the guise of insurance, on the lives of others, where no bona fide interest

[1] See *Le Guidon* (written possibly prior to the seventeenth century: Walford, art. "Guidon de la Mer" in the *Insurance Cyclopædia*), pp. 62–4; Molloy, *de Jure Maritimo*, pp. 253, 254; Walford, art. "Captivity, Insurance Against," ibid.; Leybourn, *Panarithmologia*, Appendix, p. 38. For a modern example of an insurance not altogether dissimilar, see the *Zeitschrift für die gesamte Versicherungs-Wissenschaft*, IX. iii. p. 571.

[2] Book III. 6, art. ix.: Pardessus, *Collection des Lois Maritimes*, iv. p. 371.

[3] Manes, *Versicherungswesen*, p. 203.

could possibly be pretended to exist. Wagers, for example, against the death of the king or the pope within a given period could only, in the generality of cases, be the outcome of the gambling passion.

In comparatively recent times a vast amount of this class of wagering has been witnessed in England. During the eighteenth century, with the period of intense speculation which opened it, immense sums were "written" on the lives of various men of note, in particular if they were in some danger. "Successes or disasters," in fact, "were all the same to the assurers; the seals of a prime minister, or the life of a highwayman, answered equally the purpose of the policy-mongers; and India or Minorca, Warren Hastings or Admiral Byng, were alike to them if they could put money into their purses."[1]

It is necessary, however, to retrace our steps a little in order to observe that there did exist contracts which on the first count would satisfy our conditions. First of all let us look at a form of insurance (we shall call it such for the sake of convenience, disregarding for the moment our second count), which was frequently practised in Rome during the seventeenth century, namely, against the risk of death resulting from pregnancy.[2] The practice would seem to have originated in connection with female slaves,[3] and that aspect of it belongs also rather to the insurance of things than of persons. According to the laws ruling in Genoa, whoever was adjudged responsible for the pregnancy of a slave belonging to another was subject to a heavy fine which was doubled should

[1] Francis, *Annals, Anecdotes, and Legends*, p. 144. For a vivid picture of the conditions existing, see ibid., pp. 140–56; see also Walford, art. "Gambling Insurance Projects Generally" in the *Insurance Cyclopædia*.

[2] Bensa, *Histoire du Contrat d'Assurance*, p. 90.

[3] See Bensa, ibid., pp. 90, 91.

death result, and it was possible to obtain conviction on fairly slight evidence. As the only person who was regarded as suffering injury by the offence was the owner of the slave, it became not uncommon for the accused person to enter into an agreement with him whereby the former, by the payment of a certain sum, was able to indemnify himself against all consequences, even the death of the slave.

Such agreements soon assumed the *form* of insurance contracts, and Bensa reproduces two of them belonging to the fifteenth century from the Genoa archives.[1] The one is dated November 15, 1430, and concerns a slave as to whom an action is pending, and is for a period of four months; the other, dated January 23, 1467, where confinement is at hand, is for a period of two months only.

But it is not only in connection with slaves that we find the practice of insuring against the risk accompanying pregnancy—it existed also amongst the free classes, and, as Bensa argues, it may very well have been a perfectly bona fide pecuniary interest in the continuance of the life of a given person which occasioned such a contract. He instances a case in 1427, also from the Genoa archives, where a husband insures his wife's life against this danger.[2] An even more interesting example (taken by Bensa from the same source) survives out of the following year, in which we have the simple case of an insurance taken out by one person on the life of another, for the period of a year, with reference to no special danger; there is nothing to show whether an adequate insurable interest existed.[3]

[1] Bensa, *Histoire du Contrat d'Assurance*, pp. 92, 93.

[2] Bensa, ibid., p. 94.

[3] See Bensa, ibid., pp. 94–6. See also a similar contract, 1427: ibid., pp. 96, 97.

Both of the contracts last referred to are underwritten by a number of signatories in the manner of marine policies, but even supposing that both could satisfy us on the ground of insurable interest—our first condition—there is no evidence which would justify us in supposing that they could fulfil our second (just as so many of the early marine policies could not), and they must, therefore, still be deemed to have found their correct classification under the heading of this chapter.

It is small wonder, indeed, if the law had to be set in operation to check the evils which we have sought briefly to trace.[1] As early as 1570 there was an ordinance of Philip II.,[2] "relating to insurance contracts in the Low Countries," which ran as follows: "In order to prevent the abuses, deceits, frauds, and crimes committed through assurances on the lives of persons, wagers on voyages, and other similar devices, we have prohibited and forbidden them, and do prohibit and forbid them as harmful and contrary to the common good and as an evil example."[3] Eighteen years later there was legislation in Genoa on the subject,[4] and in 1598 an ordinance of Amsterdam[5] set forth that "It shall by no means be permitted either to make any assurance on the lives of persons or on any wager relating to a voyage or similar devices; any being made will be null and void."[6] Rotterdam[7] soon

[1] Ehrenberg, *Versicherungsrecht*, p. 39; Goldschmidt, *Universalgeschichte des Handelsrechts*, p. 382; Bunyon, *Law of Life Assurance*, pp. 8–10, *Law of Fire Insurance*, pp. 30, 31; Gebauer, *Sogenannte Lebensversicherung*, pp. 62, 63.

[2] Pardessus, *Collection des Lois Maritimes*, iv. pp. 103 sqq.

[3] Art. xxxii: Pardessus, ibid., p. 116.

[4] Genoa Civil Law, December 16, 1588: Pardessus, ibid., pp. 526 sqq.; Book V, cap. xvii: ibid., pp. 533, 534.

[5] Pardessus, ibid., pp. 122 sqq.

[6] Art. xxiv: Pardessus, ibid., p. 131.

[7] Enactments, 1604 and 1635 (revised): Pardessus, ibid., pp. 152 sqq.

followed suit in similar terms.[1] In 1681 we have the French Marine Ordinance,[2] with the terse prohibition, "No assurance shall be made on the lives of persons,"[3] modified by the interesting provision that "those who redeem captives may insure on them the price of the ransom, and the insurers are bound to pay if, on the way back, they are retaken, killed, drowned, or if they perish otherwise than by natural death."[4]

In England the great law which dealt with the subject was that of the year 1774, known commonly as the Gambling Act, and stated as being for the purpose of "regulating Insurances on Lives, and for prohibiting all such insurances, except in cases where the person insuring shall have an interest in the life or death of the person insured." After a reference to the mischievous kind of gaming which, as we have seen, had become so prevalent, it went on to enact: "That, from and after the passing of this Act, no insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account, such policy or policies shall be made shall have no interest, or by way of gaming or wagering; and that every assurance made contrary to the true intent and meaning hereof shall be null and void, to all intents and purposes whatsoever."[5]

The evil was certainly checked, but hurtful effects long remained. Development of true life assurance could not fail to be retarded by the abuses to

[1] Art. x: Pardessus, *Collection des Lois Maritimes*, iv. p. 156.
[2] Pardessus, ibid., pp. 325 sqq.
[3] Book III, 6, art. x: Pardessus, ibid., p. 371.
[4] Art. xi: Pardessus, ibid., p. 371.
[5] 14 Geo. III. c. 48, sec. 1.

which the name had been applied, and which had rendered it an object of suspicion and dislike, both to the public and to the authorities. Even the cure itself, the stringent legislation which came into force, in many cases excluded with the bad also the possibility of the good.

CHAPTER XVII

HOLTZSCHUHER, OBRECHT, AND TONTI

ROSCHER would divide all men of note of various ages into two great groups, namely those who cross the borders of their own times and lay the track of the future, whether by improving practice or theory; and those on the other hand, in whom only the spirit of their own age is particularly strongly developed, on whom the stamp of their own age is specially clearly set. To the latter group belong Holtzschuher and Obrecht,[1] for they were among the advance-guard of an age rich in impulses and projects for reform. It is true their own particular projects were doomed to come to no practical issue, partly, no doubt, owing to the stormy nature of the times which produced them. None the less, they claim our consideration for a few moments, as they are not without their significance in the history of life assurance.

Berthold Holtzschuher,[2] whom we shall look at first and in least detail, was born at Nuremberg of an old patrician stock about the year 1510. In 1551 he was burgomaster of the town, and he died there in 1582. His great financial project, which is

[1] Roscher, *Geschichte der Nationalökonomie in Deutschland*, pp. 157, 158.

[2] See Lippert, *Holtzschuher*; Gebauer, *Sogenannte Lebensversicherung*, pp. 54 sqq.; *Ein finanz- und sozialpolitisches Projekt*, pp. 717–35, which contains very interesting documents, pp. 721 sqq.

all that concerns us here, seems quite to have failed to gain the appreciation of his contemporaries. It rested on a suggestion for the compulsory insurance of all children of whatever station: the parent was to be compelled to deposit a sum of money, a thaler at least, on the birth of the child, and the latter, on "coming to years" and marrying, was to receive three times the amount as dower. In the event of the death of the child, deposit and interest went to the authorities.[1]

The plan was to work beneficially in two ways—by encouraging thrift it was to serve as a check to the ever-increasing poverty, and at the same time it was to place a considerable capital in the hands of the community which could be employed for the improvement of education and other similar purposes. Certainly the high rate of mortality at the lower ages would favour the assumption that the undertaking would have paid. Holtzschuher reckoned that not half of those born attained to maturity and married, and doubtless he was not very far wrong in his estimate.[2] Be that as it may, he was unsuccessful in enlisting the enthusiasm of any of the various town authorities, whom he approached somewhere about the year 1565,[3] a failure which, whatever it may have cost them, meant to him the loss of the 10 per cent. remuneration which he reserved for himself. The archives of Hamburg and Lübeck still contain the documents embodying the particulars of his scheme.

George Obrecht[4] was born in the year 1547 at

[1] Compare the arrangement referred to by Wilson, *Discourse uppon usurye*: see Walford, art. "Endowment Insurances" in the *Insurance Cyclopædia*.

[2] See *Ein finanz- und sozialpolitisches Projekt*, p. 720.

[3] See ibid., pp. 717, 718.

[4] See Lippert, *Obrecht*; Gebauer, *Sogenannte Lebensversicherung*, pp. 54, sqq.; *Ein finanz- und sozialpolitisches Projekt*, p. 719.

Strassburg, and died there in 1612; in 1575 he was professor of law, and in 1593 received the rectorship of the university;[1] he served on the council of the town. As with Holtzschuher, however, his claim to our attention here is his scheme of insurance which, in his case also, was to benefit directly both the treasury and the public.

The idea of a State insurance of children which was also to be revenue-bringing is already to be found in his "Discursus bellico-politicus . . .," written in 1605, but it finds clearer expression in a writing of the following year, entitled "Politisch Bedencken vnd Discurs: Von verbesserung Land vnd Leut, anrichtung gutter Policey, vnnd fürnemlich von nutzlicher erledigung grosser aussgaben, vnd billicher vermehrung eines jeden Regenten vnd Oberherren Jährlichen gefählen vnd einkummen." It may be worth while to quote from this work at some length. "A ruler," the author suggests, "could decree that, whenever a son or a daughter was born in his domains, the father should be permitted to deposit in the Exchequer a sum of money according to his will, and that such sum should so remain without interest until the son was 24 years of age or the daughter 18. When that age was reached the money should be paid out to the father if he were still alive, or, failing that, to the son or daughter, with the amount added which the sum would have borne at 5 or 4 florins per cent. interest. In the event of the earlier death of the child, the sum should fall to the Exchequer. If, however, there were other children alive or afterwards born who could take the place of the deceased, the money should be no less paid to such, when they attained the required age, than if the

[1] It is not perhaps surprising to find that Obrecht's theories of political science in general were those of the Mercantilists: see Lippert, *Obrecht*.

payment into the Exchequer had been made in their name. Such a statute would be very welcome to many merchants and others. It would serve to keep the authorities informed of the birth in their domains, and also afford the Exchequer the use of such sums for a considerable time, as well as absolute possession in certain cases. There was also the advantage to parents and children, in that the latter on reaching the given age could confidently look to the Exchequer for dower and means of maintenance, even should the father in the meantime become bankrupt and ruined. The authorities, however, must see to it that all money which comes to them by such means be separately administered, and lent out against pledge at a moderate rate of interest, in order that when the time comes they may have the wherewithal to meet their obligations. For otherwise the scheme would be of small profit either to the State or to its subjects." [1]

Substantially the same thought is the subject of a third work entitled: "Constitution und Ordnung von einem hochnützlichen Aerario liberorum, in welches von den Eltern allerhand Summen Gelts, fürnemblich ihren neugeborenen Kindern und in eventum ihnen selbs, auch der Obrigkeit und gemeinen Wolfahrt zum Besten angelegt werden, sampt allerhand Erklärungen und 2 Kinderrechnungen."

It may be argued that there was nothing very original about either of the schemes outlined above: probably both obtained their inspiration from Italy, where the *montes pietatis* had already arrangements of a similar nature. At the same time it must be borne in mind that with the Italian institutions it was from first to last a question of how best to obtain funds for the object which had

[1] Pp. 23 sqq.: quoted from Gebauer, *Sogenannte Lebensversicherung*, pp. 55, 56.

led to their being formed, namely, that of making loans. It was from the loans that the public was to derive the real benefit, and not from the payment of insurance sums to their children. That was merely one means among others to an end.

Holtzschuher and Obrecht, possibly enough, also regarded their own schemes primarily as a means of raising revenue, for the purpose of reforms of various kinds, in which case the analogy with the *montes pietatis* is a close one. But at the same time they were far-reaching social projects. Their promoters had realised this much, that insurance could be made a self-supporting institution, and obviously the great good which would be wrought thereby in the cause of the encouragement of saving was strongly in their minds. The crowning advantage, however, which their proposals possessed over the devices of the lending-houses, is to be found in the fact that, whereas in the main the operations of the latter in this particular were probably comparatively small and had an application strictly local, what was projected in Germany was an application of the principle to spheres sufficiently extended to allow scope for the working of the law of averages. And the extension of the practice was to be aided by some degree of compulsion, or by the guarantee of the community, or both. It may be worthy of remark that, both here and in the case of the *montes pietatis*, the presence of a condition requiring the marriage of the beneficiary rather than the attainment of a given age did not introduce the same element of uncertainty into the contract as such a stipulation would at the present time. Probably in those days practically all marriageable people did marry, and at a comparatively early age. Holtzschuher, at any rate, treats it as quite an understood thing.[1]

[1] *Ein finanz- und sozialpolitisches Projekt*, p. 720.

In striking contrast to the failure of these German projects to obtain recognition stands the success of those of the Italian Tonti, brought forward some hundred years or so after Obrecht was born. They, too, were devised to relieve the public finances; they, too, are of no small importance in considering the development of life assurance.

Lorenzo Tonti[1] was a physician, a Neapolitan by birth. He was, however, attracted to Paris by the régime of Mazarin, by whom a pension was granted him out of the public funds in 1648 or 1649; exactly on what account remains uncertain. He recommended to the Cardinal a scheme for a State loan, but the opposition of Parliament wrecked the project (1653). An attempt three years later to form a "Tontine"—a name now long in use—under the title of a "Royal Bank," which by virtue of its constitution did not require any authority from Parliament, miscarried because of the suspicious and unsympathetic attitude of the Paris public, and it was not till 1689 that the first State Tontine came into actual being. Meanwhile Tonti, who with the death of Mazarin had lost his pension, and afterwards fallen into disgrace and the Bastille, had probably already died there.

The constitution of this first State tontine was as follows. A sum of 14,000,000 livres was to be raised by means of individual payments of 300 livres to the State, and a rent for life was to be granted to the participators, to furnish which 10 per cent. on the total was to be set aside yearly. The loan was divided into fourteen classes according to the age of the entrants, and the interest paid was

[1] As to Tonti and the Tontines, see Grosse, *Tonti*; Karup, *Theoretisch-praktisches Handbuch der Lebensversicherung*, p. 10; Emminghaus, *Lebensversicherung*, p. 551; Brämer, *Versicherungswesen*, pp. 77, 78, 178; Manes, *Versicherungswesen*, p. 202; Gebauer, *Sogenannte Lebensversicherung*, pp. 57 sqq.

regulated by the same consideration, the higher ages taking the higher interest. The essential peculiarity was, however, that whilst there was to be no ultimate repayment of the capital, there was not the customary liquidation by means of a constant rate of return, year after year, deemed to cover both interest and repayment; but, on the death of a member in any particular class, the interest formerly paid to that member went to swell the return paid to the remaining members of the class, till it should be finally extinguished.[1] There was a second tontine seven years later on similar lines, in which the sum to be raised was 19,600,000 livres, and that set apart for interest 1,400,000 livres yearly, or a little over 7 per cent.[2] They were, in short, simply State institutions grounded on the principle of association for the granting of life annuities of a particular kind. There was this marked contrast with the ordinary form of life annuity, that, whilst in the latter it was the insurer who benefited by the early death of an annuitant, here it was the remaining annuitants in that particular group.[3] The striking advantage of

[1] The royal edict of November 11, 1689, ran: "Cette Tontine consiste en 1,400,000 Livres de Rentes viagères, constitutées sur und pied proportionné a l'âge des rentiers, de qui l'on a vu l'extrait baptistaire, et qui sont divisées en 14 classes, et dont les survivants héritent des morts, de sorte, que le dernier qui demeure d'une classe, reçoit seul le revenu du Capital des rentes de la classe." Quoted from Krünitz, *Leibrenten*, p. 214, note.

[2] Krünitz, ibid., p. 215. Krünitz states that a scheme the same as Tonti's had already been proposed in the time of Louis XIII.: ibid., p. 214, see also p. 218. As to the very interesting final result of both tontines, see ibid., pp. 217, 218; Bielfeld, *Lehrbegriff der Staatskunst*, p. 541. Compare the result of an English tontine founded in 1777, during the crisis of the American War of Independence: Martin, "*The Grasshopper*" *in Lombard Street*, p. 100.

[3] In the case of some tontines, the various classes heired each other in a like manner: Gebauer, *Sogenannte Lebensversicherung*, p 59, note 1.

the arrangement—quite apart, however, from questions as to its morality and moral influence—was that the income obtained increased with increasing age, or just when the need for it was likely to be most felt. It was thus, in a sense, the converse of regular life insurance, where early death brings an equally disproportionate return to outlay.

From France the idea spread to other countries. Already in 1671 we meet with State tontine schemes in Amsterdam;[1] 1692 in England; 1698 in Brandenburg,[2] and 1752 in Gotha.[3] In France itself numbers of new ones sprang up. Private individuals began to found tontines also, first in France, where in 1759 came into being the Chambre d'accumulation de capitaux et d'intérêts composés, from the ashes of which,[4] in the closing decade of the century, emerged the notorious Caisse Lafarge,[5] as it is commonly known from the name of its director, François Lafarge. This fantastical plan involved the subscribing, either in one amount or in ten yearly instalments, of sums of 90 francs, which were to be invested and remain unremunerated for ten years. At the end of that time the accumulated interest was to be employed to pay out rents of 45 francs to as many of the subscribers as possible, the actual recipients to be decided by lot.[6] The others must wait until the accumu-

[1] Krünitz, *Leib-renten*, pp. 288, 289; Bielfeld, *Lehrbegriff der Staatskunst*, pp. 542, 543.

[2] See Krünitz, ibid., pp. 289–95.

[3] See Krünitz, ibid., pp. 295–305.

[4] In 1770 all existing French tontines were wound up.

[5] See Karup, *Theoretisch-praktisches Handbuch der Lebensversicherung*, pp. 20 sqq.; Gebauer, *Sogenannte Lebensversicherung*, pp. 81 sqq.; Krünitz, ibid., pp. 305–8.

[6] The lottery idea was not new, however. In the case of the Gotha tontine the height of the rent receivable was decided, within each class, also by lot: Gebauer, ibid., p. 59, note 2. About 1776 two tontine lotteries were started in Hamburg: ibid., p. 89.

lation of further interest and the death of a sufficient proportion of the members made their participation possible. That point attained, the rents were gradually to rise by the same forces until they reached the height of 3,000 francs, above which, according to the first proposal, the benefit was to go to the State, to whom therefore the whole profit was ultimately to fall. The Paris administration was accordingly to have a supervision of the institution. The authorities, however, declined the honour, thus forfeiting the benefits they were to reap, but they put no obstacle in the way of the scheme being brought into operation as a private concern, under the name "Caisse d'épargne et de bienfaisance." As it held out such glowing prospects it was not surprising—or perhaps it was surprising—that in a few years deposits to the extent of about 66 million francs should have been received. By 1809, however, the suspicions of the Government were to such an extent aroused that they ordered an investigation, which ended in the winding-up of the concern, the subscribers receiving back but a small proportion of their subscriptions. It was enacted that for the future no tontine should be set in operation without authorisation by the State, and existing ones—the Caisse Lafarge had not been without its imitators—must be authorised also.[1]

Though it is undeniable that the tontine system, in any case in the form which we have just been looking at, opened the door to a considerable amount of corruption, and to that extent merits condemnation, yet there can hardly be any question that it has had no small share in developing and spreading the insurance idea. Even the doubt and suspicion which were cast upon life assurance in

[1] The existing tontines soon perished: Gebauer, *Sogenannte Lebensversicherung*, p. 83, note 1.

general, as the outcome of some very necessary legislation in connection with tontines, cannot altogether cancel the debt which we owe to the Italian physician. Though we cannot claim the idea for him as entirely original, yet he was the first to put it to any practical account. Its influence was felt far beyond the limits of France, and whatever the evil resulting from its spread, it at any rate contained the germ of true life assurance; it rested on the principle of association and took some account of the probable duration of life. Tontine institutions, had they done nothing more, helped to test the empirical rules of mortality which were current in their day. As a matter of fact, however, the experience which they gained played its part in the building up of the later mortality statistics, of which the value is inestimable.[1]

[1] Gebauer, *Sogenannte Lebensversicherung*, p. 60.

CHAPTER XVIII

THE SCIENCE OF LIFE CONTINGENCIES

THE scope of our present inquiry excludes a discussion of insurance on its technical side. The science of life contingencies, however, is so inextricably bound up with life assurance—we might almost say it *is* life assurance—that we must very briefly trace the main outlines of its history.[1]

A systematised doctrine of probabilities came but tardily. It was in the middle of the seventeenth century, just about the time when Tonti was striving to induce Paris to adopt his schemes, that the oft-mentioned correspondence between Pascal and Fermat took place, relative to certain problems of chance, and a year or two later appeared the works of the two Dutchmen, Christian Huygens and Francis Schooten, on the same subject. These were the foundations.

It was Jan de Wit, the illustrious Dutchman, at the time Grand Pensionary (a pupil of Descartes and himself a mathematician of no mean order), who first conceived the idea of applying the doctrine of

[1] See Karup, *Theoretisch-praktisches Handbuch der Lebensversicherung*, pp. 10 sqq.; Gebauer, *Sogenannte Lebensversicherung*, pp. 66 sqq.; Deuchar, *Life Contingencies*, pp. 36–8; and specially Walford (whom the last-named seems to follow), *Insurance Cyclopædia*, under a number of different headings. To Deuchar and Walford I am much indebted. I have not thought it worth while to go back to Ulpian's Estimates in the text.

probabilities to the valuation of human life. The report presented in 1671 to the States General, based on a consideration of such records of births and deaths as were at his disposal, estimated the values of life annuities according to the probability of life at given ages.[1] For all that, the treatise was for some reason or other[2] lost to the world till the middle of the last century, and may be said in consequence to have had no practical bearing on the subsequent progress.

At this time the matter had already been receiving attention in England. True, the efforts of John Graunt and Sir William Petty had resulted in mere approximations of the probable duration of human life, the material on which they based their results being very incomplete. It remained, therefore, for Edmund Halley, the well-known astronomer, to make the great advance in the science in this country by his paper submitted to the Royal Society and published in their *Transactions* for 1693[3] under the title, "An estimate of the degrees of the Mortality of Mankind, drawn from curious Tables of the births and funerals of the City of Breslau;[4] with an attempt to ascertain the price of annuities upon lives." The paper commences: "The contemplation of the mortality of mankind has, besides the moral, its physical and political uses, both which have been some years since most judiciously considered by the curious Sir William Petty, in his natural and political observations on the Bills of Mortality of London, owned by Captain

[1] See specially arts. "Annuities on Lives, History of," and "De Wit" in Walford's *Insurance Cyclopædia*.

[2] See art. "De Wit," Walford, ibid.

[3] It is interesting to note that just at this period the Government was occupied with borrowing on life annuities.

[4] The returns had been furnished by Dr. Caspar Neumann, of Breslau.

John Graunt. And since, in a like treatise, on the Bills of Mortality of Dublin. But the deduction from those Bills of Mortality seemed even to their authors to be defective. First: In that the number of the people was wanting. Secondly: That the ages of the people dying was not to be had. And lastly: That both London and Dublin, by reason of the great and casual accession of strangers who die therein . . . rendered them incapable of being standards for this purpose. . . . This defect seems in a great measure to be satisfied by the late curious Table of the Bills of Mortality of the City of Breslau . . . wherein both the ages and sexes of all that die are monthly delivered, and compared with the numbers of the births for five years last past, viz., 1687, 88, 89, 90, 91, seeming to be done with all the exactness and sincerity possible." [1]

In 1725 Abraham de Moivre, whose "Doctrine of Chances" had appeared in 1718, published his tract "Annuities on Lives, or the Valuation of Annuities upon any number of lives, as also of reversions," which soon passed through several editions: it is mainly famous for what is known as De Moivre's Hypothesis, and for the method of deriving one annuity value from another. About the same time Richard Hayes, "Teacher of merchants' accounts in that part of Cannon Street called Eastcheap," published "A new Method for valuing of Annuities upon Lives" containing a table of life annuities at yearly ages 30 to 73—the most complete table up to that date. The first really complete table seems to have been given by De Moivre in 1738 in the second edition of his "Doctrine of Chances."

From this time onward, progress is rapid and the subject begins to be treated more generally both in

[1] Quoted from art. "Breslau Table of Mortality" in Walford's *Insurance Cyclopædia.*

England and abroad. The increasing facility with which information regarding mortality could be obtained[1] helped in the right direction. The forties are memorable for several achievements of moment. Within a short time of each other, the fellow-countrymen, W. Kersseboom and Nikolaus van Struyk, published at Amsterdam mortality tables, the former basing his results on observations relative to annuitants in Holland and West Friesland, and the latter on information taken from the registers of the City of Amsterdam; whilst in Germany appeared Johann Peter Süssmilch's well-known work "Betrachtungen über die göttliche Ordnung in den Veränderungen des menschlichen Geschlechts. . . ."

The publication in 1742 of Thomas Simpson's "Doctrine of Annuities and Reversions" brought a notable advance in clearness and general treatment. "In the first place," says the author, "I have given a very exact table for estimating the probability of life, deducted from ten years' observations of the Bills of Mortality of the City of London, whereupon the succeeding calculations are grounded. Then, after showing how to complete the values of single lives, I lay down a lemma, for the sake of those unacquainted with the principles of chances, by help whereof the most intricate problems in the subject are resolved. . . . Next it is shown how to determine the values of successive lives, where the first possessor has a right, at his decease, to nominate his successor, and his successor a next successor, and so on. . . . Then is given a method for finding the values of Reversions, when the expectation depends on the Chance of one particular life in possession surviving the rest. Lastly, are

[1] For an improvement in the Bills of Mortality there is doubtless a debt due to John Smart, author of the famous Interest Tables.

laid down some easy practical rules for approximating the values of lives without the help of tables."[1]

In 1746 appeared Antoine Deparcieux's "Essai sur les Probabilités de la Durée de la Vie Humaine," a work which contained mortality tables based on the records of certain French tontines and of different religious houses in France, and which did not attract the general attention it deserved, either in England or on the Continent. A year or so later, James Dodson, "an ingenious and very industrious mathematician in London," published the first volume of his "Mathematical Repository," which, together with the second and third volumes, which followed in 1753 and 1755, dealt with various problems bearing on annuities; the third, which is of main interest to us, was one of the earliest works to deal expressly with the subject of Life Assurance.

The years 1771 and 1778 mark important points in the history of the science of life contingencies. The former date stands in the first edition of Dr. Richard Price's famous work entitled, "Observations on Reversionary Payments; on Schemes for Providing Annuities for Widows, and for Persons in Old Age; on the Method of Calculating the Values of Assurances on Lives, &c.," which contained two new tables of mortality—the Norwich and Northampton tables, on which, three-quarters of a century ago, almost every life assurance company in the kingdom based its rates.[2] It was at the latter date that, for the first time, the valuable mortality experience gained by actual practice of life assurance was tabulated.[3] In that year

[1] Quoted from art. "Annuities on Lives, History of," in Walford's *Insurance Cyclopædia.*

[2] Deuchar, *Life Contingencies*, p. 58.

[3] Kersseboom and Deparcieux had, however, utilised the experience of annuity institutions and tontines respectively.

Charles Brand, Registrar of the Amicable Society, published "A Table of the Duration of Lives in the corporation of the Amicable Society for a perpetual Assurance Office from the institution of the Society (in 1706) to the year 1777, both inclusive, being upwards of 72 years." In 1783 the fourth edition of Dr. Price's "Observations" appeared, and, apart from the fact of its being much more comprehensive than the former editions, it is noticeable by the fact that it contains tables of money values deduced from the Northampton Table of Mortality, and also a Swedish Mortality Table with expectations and money values deduced from it. Two years later Professor Tetens, of Kiel, published his work on life annuities and reversions.

The early part of the following century brought Francis Baily's able treatise, "The Doctrine of Life Annuities and Assurances analytically investigated and practically explained; together with several useful Tables connected with the subject. To which is now added an Appendix containing a new method of calculating and arranging such Tables" (1810–13). The year 1815 is important for the publication of Joshua Milne's "Treatise on the Valuation of Annuities and Assurances on Lives, &c.," a work of weight and authority in which was presented the since famous Carlisle Table of Mortality. In 1825 Griffith Davies published his "Tables of Life Contingencies, &c.," containing a table of mortality based upon the experience of the Equitable Society.

On the advances of the last century or so I do not propose to enter. Suffice it to remark that the vast mass of invaluable material which has become available by the experience of the insurance offices themselves has been subjected to the concentrated attention of a great array of industry and actuarial skill. The fact of an ascertainable uniformity in

human mortality is now regarded as a matter of course. The tables of the Institute of Actuaries, published 1872, and based on the statistics (to 1863) of twenty companies, are still the most authoritative statement on the subject.

CHAPTER XIX

FRIENDLY SOCIETIES

ANY adequate consideration of Friendly Societies[1] would be a study in itself. All that is here aimed at is to suggest, in a few words, their place in the history of life assurance.

And in so doing, perhaps the first point to emphasise is the simple fact that whereas gilds and *montes*, corodies and State tontines have all passed away, the friendly societies are with us still. The former had their share, greater or smaller, in the building up of the insurance fabric, but at best they have served but as stones on which to lay others, and were long ago lost somewhere in the foundation walls; the latter form a wing of the main edifice itself. The insurance idea finds its clearest and completest expression in the great companies, but it still finds expression, more or less clear and complete, in the friendly societies. Whether they, too, will some day be lost, is a matter which need not greatly concern us—possibly the rapid growth of industrial insurance might give us cause to

[1] See Gebauer, *Sogenannte Lebensversicherung*, pp. 49–51, 84–9; Brämer, *Versicherungswesen*, pp. 167 sqq.; Cohn, *System der Nationalökonomie*, p. 658; Fleischhauer, *Sterbecassen-Vereine*, pp. 1–7; Bunyon, *Law of Life Assurance*, pp. 308 sqq.; Brabrook, *Provident Societies*, and art. "Friendly Societies" in the *Encyclopædia Britannica;* Karup, *Theoretisch-praktisches Handbuch der Lebensversicherung*, p. 9. Cf. Defoe, *Essay upon Projects*, "Of Friendly Societies," pp. 80–90.

imagine they will. Meanwhile it is well to remember that, whilst their object and that of life assurance companies have been largely the same—namely, the payment of sums at death—the operations of the two have been, and still are, to a very great extent not mutually antagonistic but complementary.

No form of life assurance is more general or more natural than the payment of burial money. It is not only that almost every man is anxious that his own body and the bodies of those belonging to him should have a decent interment, but the need for assistance in providing it is so often intensified by the expense of a preliminary illness, during which time, of course, when it would be doubly acceptable, the usual means of subsistence, the daily or weekly wage, is cut off.

It was a development of no small importance when in this matter the gilds (with their more or less incidental payments in the event of the sickness or death of members, who were united together for quite other purposes and frequently limited to a given class or calling) began to be replaced by new societies whose one special object was to make provision of this nature. Sometimes the limitation as to calling remained—certain vocations had their own societies—but there were those formed, too, which embraced, for the purpose aimed at, all and any in the neighbourhood. Instead, then, of bodies of a corporate nature designed to guarantee their members against many contingencies and in many circumstances of life, arose looser associations tending more and more to confine themselves to meeting one or two special contingencies, notably sickness and death.

Thus came into being great numbers of burial and other provident societies, made possible largely by the decay of the gild system, in some cases not

improbably derived from gilds. Whether that was so to any extent or not, we must be careful not to exaggerate the gap which existed between the two. As we have remarked, it was an important development. But all evolution, whether it be economic or otherwise, is gradual, and the new institution retained some mark of the old, as we shall have occasion to observe. Here be it remarked that, apart from the fact of their being called "Friendly" Societies, Rose's Act, 1793, spoke of them as "societies of good fellowship," whilst, specially in the country districts of England, they still manifest several of the customs which we associate particularly with the gild system. For instance, there is still to be found the annual feast and the procession to the church, and likewise the procession of all the members on the occasion of the funeral of a brother.

In both this country and Germany the record of these societies takes us back to the seventeenth century. The law of the United Kingdom defines them as "societies for the purpose of providing by voluntary subscriptions of the members thereof, with or without the aid of donations, for the relief or maintenance of the members, their husbands, wives, children, fathers, mothers, brothers or sisters, nephews or nieces, or wards being orphans, during sickness or other infirmity, whether bodily or mental, in old age, or in widowhood, or for the relief or maintenance of the orphan children of members during minority; for insuring money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the husband, wife, or child of a member, or of the widow of a deceased member, or, as respects persons of the Jewish persuasion, for the payment of a sum of money during the period of confined mourning; for the relief or maintenance of the

members when on travel in search of employment or when in distressed circumstances . . . for the endowment of members or nominees of members at any age,"[1] and for one or two other purposes which we need not notice here. The annuities granted must not exceed £52, nor the insurances for a capital sum £300.[2]

The Act of 1793,[3] already referred to, recognised the existence of numerous societies and in various ways offered encouragement, and as a result a great many were soon enrolled. They were mostly of one pattern, small clubs and frequently of limited membership, akin to the gilds in this, that good fellowship, rather than the payment of benefits for sickness or death, was the outstanding feature. But this conception was very soon modified. The Act of 1819, passed as a result of the general conviction of the instability of friendly societies, defined them no longer as "societies of good fellowship," but as institutions "whereby it is intended to provide, by contribution, on the principle of mutual insurance, for the maintenance or assistance of the contributors thereto, their wives or children, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency, whereof the occurrence is susceptible of calculation by way of average."[4]

In Germany, during the eighteenth century, the insurance idea was steadily making way, but

[1] Friendly Societies Act, 1896, 59 & 60 Vict. c. 25.

[2] Friendly Societies Act, 1908.

[3] 33 Geo. III. c. 54.

[4] The practical results of this Act, however, do not seem to have realised the hopes that were entertained. There was further important legislation in 1829, 1834, 1846, 1850, 1855, 1875, 1896, and 1908. In Germany an important law was passed in 1876 (amended 1884). Since then there has been the great body of Imperial legislation on social problems.

making way in one direction only. We have already seen how, throughout that century, the contributions of various nations had been furnishing material for a really scientific basis for life assurance, which basis, by the middle of the century, had already taken definite though imperfect shape. We shall later see that in England during the same period, side by side with the friendly societies, capitalistic insurance was being evolved, founded on the new science.

In Germany, on the other hand, it is true that modern methods were still far distant, but for all that the advance we have spoken of was a real one. It consisted largely in an increasing appreciation of the benefits to be derived from an application of the life assurance principle to the needs of widows and orphans in particular. The Mercantile System survived longer there than in England, and, as its adherents had a firm belief in the efficacy of multiplying your population as a panacea for many ills, and as in any case Germany had suffered severely by the wars of the seventeenth and eighteenth centuries, any practical means for encouraging marriage by diminishing the uncertainty of the future was likely to have a welcome. Such a means was found in the new societies—specially the widows' and orphans' funds—which began to spring up. The authorities encouraged their formation, lent them financial support, and exercised some control over them.

Mercantilism thus furthered the insurance idea in Germany, but hindered its development on free lines. Despite the distance which undoubtedly separated the new societies from the old gilds, the great majority of those we meet with, in the eighteenth and the first half of the nineteenth centuries, had still a very narrow local sphere and a very faulty technical basis, of which we

shall speak shortly. Not infrequently, moreover, they manifested more the stamp of charitable institutions than of insurance.

To the widows' and orphans' funds must be added numerous other classes of societies of the same nature, funds for brides, sometimes for bachelors, burial clubs, and so forth, which all enjoyed popularity.[1]

This application of the principle of association directly to insurance ends, in the friendly societies of both England and Germany, was a mark of progress. Its strength was its weakness unfortunately. As long as the payment of benefits in the case of sickness and of death was merely one object among many, as in the gild system, the importance of a sound technical basis for such payment was comparatively slight. A scientific basis became absolutely essential, however, immediately the provision of these benefits began to constitute the *raison d'être* of the society, and the difficulty was, of course, that there was no past experience which could be any guide. The old method, under which each case of death—that is the side which concerns us—was met by a levy on the surviving members, was here doomed to failure. In the early years of a burial or friendly society it worked admirably, it is true, because in the ordinary course of events deaths were not

[1] See Gebauer, *Sogenannte Lebensversicherung*, pp. 86–9, and notes. Only too often these societies suffered, on the one hand from a faulty technical basis, on the other by limitation to some particular locality, class, or calling. There were, of course, exceptions in both respects: as to the former may be mentioned the society founded in 1778 in Hamburg for paying life-rents, burial money, and benefits to widows and orphans, and the Zellische Spaarcasse für Sterbefälle, founded 1785; as to the latter, we may notice the Herzoglich-Würtembergische allgemeine freiwillige Witwen- und Waysen-Casse, the Mecklenburg-schwerinische Witwen-Casse and the Oldenburgische Witwen-Casse.

frequent, and it had the advantage of simplicity —very little book-keeping was needful and no holding of money. Only, with the increasing age of the society, the age of the individual survivors increased, and as a consequence deaths became more common and the individual burden heavier. And those who had to meet this growing burden had not only paid most already as having been longest in the concern, but were those whose advancing years made the weight of any payment at all ever heavier.

Under the old conditions such a state of affairs was automatically prevented by the attraction to the gild of a constant stream of new members, either for other and primal advantages offered or as the result of compulsion as members of a particular calling. In the new institution, where there was neither independent attraction nor compulsion, the evil itself prevented its own cure, for naturally when, by reason of the heavy calls, the need began to be felt for new members, it was difficult to induce a number to come in sufficient to make much material difference, as also it was not easy to persuade all the existing members to remain. Even where it would have been possible to secure a constant influx of new blood, the policy adopted often stood in the way. In order to obviate an incessant altering of the amount of the contribution resultant upon a fluctuating membership, it was common to limit the latter to a given number. Those who announced themselves for membership were put on a waiting list, from which they were gradually drafted in as places were made vacant for them by death. And in waiting for admission they too became old, and at the same time entrance for younger persons was effectually blocked. Various remedies were attempted without much success, particularly that of exempting from further liability

those who had made a certain number of contributions—which merely increased the load for every one else.[1] Little by little it began to be recognised that, without the existence of funds and some sound actuarial foundation, security was impossible, though even then a great number of the societies remained unchanged.

In those, however, which did carry out adequate reforms, the system of a levy at the death of a member on all the others was replaced by periodical contributions, graded according to age. These went to form the fund from which the burial money was taken when required. As so frequently the family of the deceased required more than merely burial money, the amount paid out at death began to be increased accordingly, in order to meet other needs of those left behind. The idea of mutual saving came increasingly to the front; members paid premiums to a common fund in order to secure a certain support to their families or dependents at their death. The conception of association as a means to avoid the risk, consequent on untimely death, which accompanies individual effort in the matter of saving, became more and more fully grasped and more and more efficiently put into execution. Thus both the aim as well as the organisation of friendly societies and capitalistic companies tended ever more nearly to approximate.

[1] Another was the introduction of a rule that on each payment of a death-benefit the recipient of the money must bring in a new member. This resolved itself, however, into the nomination of any one at all; the beneficiary would pay a single contribution for him—and it would end there. Still another, which also ended in failure, was to make the amount of the benefit at death proportionate to the amount of the contributions paid in.

CHAPTER XX

THE COMING OF THE GREAT COMPANIES

THE modern era of life assurance hardly concerns us here. We may briefly look, however, at the beginnings of the great companies [1] which are the striking characteristic of all insurance in its modern sense.

That modern life assurance made such comparatively early and rapid advance in England is probably due in no small measure to the fact that she was cut off to such an extent from the struggle and turmoil of the mainland, and whilst the minds and attention of continental nations were so much taken up with war, England was able to devote her energies to peaceful pursuits. This circumstance, which undoubtedly has been responsible for no inconsiderable degree of the prosperity of this country, assisted, at least, to give her the start here also. With the general restoration of peace, life assurance in its new capitalistic form began to make progress abroad.

It was only with the coming of the companies

[1] See Gebauer, *Sogenannte Lebensversicherung*, pp. 72–101; Karup, *Theoretisch-praktisches Handbuch der Lebensversicherung*, pp. 14 sqq.; Emminghaus, *Lebensversicherung;* Fleischhauer, *Sterbecassen-Vereine*, pp. 4, 5; Walford, *Insurance Cyclopædia*, under various heads; Brämer, *Versicherungswesen*, pp. 79–89; Manes, *Versicherungswesen*, pp. 203–10; art. "Lebensversicherung" in the *Versicherungs-Lexikon;* Wagner, *Versicherungswesen*, pp. 439–42.

that life assurance took any real hold upon the minds of men in England. Certainly for a very long time previously, apart altogether from the institutions we have considered in the past chapters, there had been sporadic appearances of various phases of the contract, but the element of association was lacking; they were largely agreements between individuals, and, as isolated instances, are of small importance to us. Thus in the sixteenth and seventeenth centuries we find persons "insuring" their lives for the benefit of their heirs or creditors, when setting out on a journey,[1] and there are records of "insurances" contracted on other occasions for the event of death within a given period, probably most often of short duration.[2] "Other assurances," we learn from a seventeenth-century writer, "are made upon the Lives of Men and Women, at a rate that is moderate. For by this means if you buy any Place or Office that is worth 1,000*l.* or more, or less, and you have not Money enough to purchase it, you borrow 4 or 500*l.* Now if you die, and are not in a Condition to pay this Money, it is lost: But if you Ensure your Life, then your Friend that you did borrow it of, will have his Money honestly paid him."[3]

It is obvious, however, from the remarks of Defoe already quoted,[4] that even at the dawn of the eighteenth century the insuring of lives was by no means widely practised or generally approved. In a work by Richard Hayes entitled *A new*

[1] Guidon, p. 64. The writer does not make actual reference to England—he merely mentions the thing as being done by some nations, and he condemns it on account of the abuse and cheating to which it gave rise.

[2] See, *e.g.*, Malynes, *Lex Mercatoria* (written 1622), pp. 148, 149.

[3] Leybourn, *Panarithmologia*, Appendix, p. 38. Cf. Malynes, ibid., p. 149.

[4] Above, p. 1.

Method for valuing of Annuities upon Lives, published thirty years later, a hypothetical case is advanced of a clergyman or layman, holding a benefice or office for life, and desirous to make provision for his family. He is able to save a certain sum each year, and he is represented as selling to some other person an annuity to that amount, for the remainder of his life. If life assurance in the newer sense, which is, as already observed, but an annuity reversed, had been in anything like common use at that time, presumably the case would not have been presented in this clumsy manner.[1]

No immediate advance in the practice of life assurance corresponded to the advances on the scientific side. The latter, in fact, actually remained for some considerable time unacknowledged, and then gradually, and first by way of the annuity business, it came into its own. The Equitable was the first company to be formed on what we now regard as true principles: in giving birth to it, England became the mother of the modern life assurance system.

There are several other concerns, however, which claim attention first, because to some extent they cleared the way and led up to the appearance of the Equitable. In the year 1698 an institution projected by Dr. William Assheton was established by the Mercers' Company in London, with the object of granting life annuities to widows of members. The scale of payment to the widow was to be £30 for every £100 subscribed by the

[1] Walford, art. "Annuities on Lives, History of," in the *Insurance Cyclopædia* (see p. 123). It is true that the Amicable Society (not to speak of the London and Royal Exchange Corporations) was already in existence, but its operations were quite uncertain: ibid. In addition, the age supposed is 47, whilst the Amicable did not, at one period, go above age 45: see ibid., i. p. 78; ii. p. 571.

member; those members under thirty years of age were limited in their subscription to the latter sum, those under forty to £500, and those under sixty to £300. It was closely followed by a similar institution, the Society of Assurances for Widows and Orphans, 1699. This was to be a society of 2,000 members, and at the death of any one of them £500 was to be raised by equal contribution on the part of the others.[1] In the following year a further similar society was commenced by the same founder, Mr. Stansfield, known as the Second Society of Assurance for Widows and Orphans.[2]

None of these three projects enjoyed any measure of success.

A much more noteworthy event was the creation of the Amicable Society for a Perpetual Assurance Office. Formed at the beginning of 1705, it obtained from Queen Anne a charter on July 25th of the following year, incorporating it "for the mutual benefit and interest of every person that shall at any time be a Member thereof, in order to provide for their Wives, Children, and other relations, after a more easy, certain, and advantageous method than any that hath hitherto been thought of, by an Amicable Contribution. . . . And it has been humbly certified unto us that their design will be of singular Use and Relief to many Families, by providing for great numbers of Widows and Orphans, who might probably be otherwise left wholly destitute of a maintenance by the sudden death of those on whom they depend. . . ."

The number of members to be incorporated was

[1] For particulars, see *Yale Readings in Life Insurance*, pp. 63–6. Cf. the suggestion of Defoe two years previously: *Essay upon Projects*, pp. 86 sqq.

[2] For particulars, see *Yale Readings in Life Insurance*, pp. 66, 67.

limited to 2,000, and it might be fewer. A policy was to be granted to each member, entitling his or her nominee or assigns on the member's decease, not to a sum fixed beforehand, but to a dividend ascertained in the following manner: If there were the full 2,000 members, then one-sixth of the contributions was to be allotted for those who died during the first year; in the second year the sum of £4,000 was to be divided among the representatives of the deceased members; in the third year, £6,000; in the fourth, £8,000; in the fifth, £10,000, and so ever afterwards, with as much more as should be agreed by a general court of members to be held annually; if there were not the full 2,000 members, then the annual divisions were to be in proportion to the actual members. The undivided surplus was to accumulate, augmented by the proceeds of annuities sold. In the original charter there was apparently no provision as to age, but shortly afterwards it was laid down that entrants must be between the ages of 12 and 45, and must appear to be in good health; but all members paid the same yearly contribution to the funds. It is not surprising if many changes took place in the organisation of this society before it was finally taken over by the Norwich Union Life Society about half a century ago,[1] after an independent existence of 161 years.

It is unnecessary to enter upon an account of the period of speculation which took possession of the metropolis in the early years of the eighteenth century. Suffice it to say that "the principle of assurance, applied to other subjects than merchandise, seemed a sudden light to those who had capital, and did not know how to employ it; while it was a great boon to those who wanted money and did not know how to get it."[2] The principle was indeed for the

[1] 29 & 30 Vict. c. cxxxv.

[2] Francis, *Annals, Anecdotes, and Legends*, p. 63.

time being applied broadcast. "If one company was commenced to insure marriage portions, a second was sure to follow to insure the portions of their children," and the amount of wild speculation and fraud in "insurance" schemes, among others, of a purely fantastical nature, was very large.[1]

These proceedings were a somewhat melancholy commentary on the advances just made by Halley towards scientific life assurance. Whether the gain of having the subject of insurance brought before the public so prominently, even in such a form, could weigh at all against the great discredit which was cast upon it, is very doubtful. And certainly the ignominious failure of so many undertakings, whether honest or otherwise, must have been a very real hindrance to the organising of solid concerns. The one bright spot in it all is that somehow or other this very period managed to evolve, in 1720, two great companies—the London Assurance Corporation, and the Royal Exchange Assurance Corporation, formed for the transaction of marine underwriting, which in the following year obtained further powers enabling them to issue life assurance policies. It was, none the less, some considerable time before these powers were really turned to much account.[2]

The first step towards the founding of the Society for Equitable Assurances on Lives and Survivorships which, under the shorter form of the Equitable Society, was to become so famous, was the insertion of an advertisement under the

[1] For some account of the period, see ibid., pp. 63 sqq.; *Yale Readings in Life Assurance*, pp. 70–3. Writing even before the close of the seventeenth century, Defoe had said that "wagering, as now practised by policies and contracts, is become a branch of assurance": *Essay upon Projects*, p. 101.

[2] The Royal Exchange Corporation, for instance, only took £10,915 in life assurance premiums in the period 1721–61: see Walford, *Insurance Cyclopædia*, ii. p. 576.

date February 28, 1756, in the newspapers, announcing a meeting for March 2nd and inviting the attendance of any who might be induced to join such an undertaking.

Ultimately a considerable measure of support was forthcoming, and in 1757 their first petition was presented to the Government for a charter of incorporation, and was opposed, apparently as a matter of course, by the existing companies. As this proved unsuccessful, two further petitions were made—the final one in 1761—but with no better result.

The report on this last petition by the Law Officers of the Crown, dated July 14, 1761, commences :—

"Upon this petition your Lordships will be pleased to observe—

"1st. The petitioners propose to insure upon cheaper terms, and for a longer time, than is practised at present in any offices, to which end they have specified the rates at which the assurance is to be done.

"2nd. They propose to raise a capital, by investing the premiums, together with a small additional sum of 40s. to be deposited by every person insured, to answer all losses ; and, by way of further security, to oblige every person insured to become a member of the corporation, and to declare or covenant that he will bear his proportion upon any call, if the premiums and deposits should prove deficient." [1]

The supposed precariousness of the insurance fund was regarded by the Government as, at any rate, one fatal objection to the scheme.

The hopes of obtaining a charter being recognised as vain, those of the promoters who had not

[1] The whole of this interesting document is given by Walford, *Insurance Cyclopædia*, ii. pp. 576–7.

lost heart turned their attention to voluntary partnership. In 1762, certain difficulties having been overcome, the Society was finally established. The deed of settlement in its preamble sets forth that, "Whereas from mature consideration it appeareth that many advantages and great benefits may arise and be secured to great numbers of persons in particular situations of life and circumstances of fortune, from the establishment of a Society to be composed of such persons as shall be qualified and be willing to become mutually contributors for equitable assurances on lives and survivorships upon premiums proportionate to the chance of death attending the age of life to be assured, and to the time such assurance is to continue. And whereas such assurances may and will, with safety to the assurers and equity to the assured, be made in manner hereinafter specified. . . ."

With the completion of the deed the promoters issued a pamphlet, entitled "A Short Account of the Society for Equitable Assurances on Lives and Survivorships, established by Deed inrolled in His Majesty's Court of King's Bench at Westminster,"[1] which, after stating some general propositions as to life assurance, goes on: "The considerations induced a number of gentlemen in the year 1756 to form a design of establishing a society for equitable assurances upon lives, with a view to the sole benefit of the persons assured, whose interest hath been hitherto considered as wholly distinct from, not to say incompatible with, that of the assurers; a society in which the assured being at the same time mutually assurers of one another, the interest of one might be the interest of both; in which a life might be assured for a single year, a certain number of years, or for the whole continuance of life; and in which the premiums of assurance should

[1] London, 1762.

be no more than adequate to the chance of death, attending the age of life of the assured, and to the time the assurance was to continue . . . the fundamental parts of the constitution of which Society are these: (1) That in the same manner as in the Hand-in-Hand and Union Assurance Offices of houses and goods from fire, so in the Society for Equitable Assurances on Lives and Survivorships, the assured are mutually assurers one to the other. . . ."

With the early labours for the founding of the Equitable the name of James Dodson is prominently associated, though his death in 1757 prevented his ever seeing the fulfilment of the project. It was he who prepared the first table of premiums employed. Many modifications and improvements, which added greatly to its prosperity, were introduced into the concern before long; in these Dr. Price and William Morgan played an important part.[1]

Undoubtedly the success of the Equitable was no inconsiderable factor in the subsequent development of life assurance in this country.

Before turning to a brief survey of the rise in other lands of modern life assurance companies, mention must be made of an institution which, of comparatively recent years, has come to the front in an extraordinary manner—that of Industrial Insurance.[2] Occupying a somewhat anomalous position, it may be said to stand midway between the friendly society and the ordinary life assurance office—it has to a great extent borrowed the objects

[1] For particulars as to the history of the Society, see Walford, art. "Equitable Society," in the *Insurance Cyclopædia*; Francis, *Annals, Anecdotes, and Legends*, pp. 108 sqq.

[2] See Manes, *Versicherungswesen*, pp. 248–59; art. "Volksversicherung" in the *Versicherungs-Lexikon*; *Yale Readings in Life Insurance*, pp. 382–97.

of the former and the organisation of the latter. In other words, it may be roughly described as the business of the burial clubs over again, but on a large scale. The German term for it, "Insurance of the people" (Volksversicherung), is an apt one.

It has its home in England, however, and the great impulse towards it was afforded by a Parliamentary Report of the year 1853, which drew attention to the need of a better provision for the working classes than was afforded by the burial clubs and friendly societies. The "Prudential" was formed in 1848; but the business by which it is now universally known did not become prominent until after the issue of the report in question. To avoid having to return to the subject later, it may be observed here that the growth of industrial insurance in Germany is considerably more recent still, its first introduction there being through the Austrian company, Patria. The latter was admitted to operations in Prussia in 1875, and the Prussian connection was seven years later taken over by the Friedrich Wilhelm, now Germany's second industrial company, the first place being occupied by the Victoria. In Austria and Switzerland, and particularly in the United States, the business has flourished greatly.

Capitalistic life assurance had been long under way in England before Germany[1] got her first successful company afloat. Three factors[2] in different ways aided greatly in enabling this to be accomplished in the early part of the nineteenth century, namely, the opening of branches on the Continent, and particularly in Germany, by English offices—Prussian legislation was concerning itself

[1] See Gebauer, *Sogenannte Lebensversicherung*, pp. 91 sqq.; Karup, *Theoretisch-praktisches Handbuch der Lebensversicherung*, pp. 24, 25.

[2] Gebauer, ibid., p. 90.

with these at least as early as 1794; the continued failure of a not inconsiderable number of burial and other similar societies; and finally the escape from Mercantilism, which, as we have already noticed,[1] survived longer in Germany than in England. It was in Hamburg, with its close commercial intercourse with Great Britain, that the first important scheme for a German life assurance office took form. Unhappily, however, the joint-stock company founded in 1806 by the merchant and writer, Beneke, was compelled, as the result of only eight years' experience, to decline any new entrants, and soon afterwards had to be dissolved. Certainly the times were far from propitious. Intellectual and economic lassitude following the war may in part account for the failure of a new project in 1823 to tack on the business of life assurance to the Elberfelder Feuerversicherungsbank.

The first successful attempt was made in 1827. In that year Ernst Wilhelm Arnoldi, founder of the Gotha Fire Insurance Bank, with the support of other substantial men, brought forward his long-cherished plan for a Life Insurance Bank on mutual lines.[2] In 1828 the venture received the necessary sanction from the Government, and in the following year it began its activities, under the title of Lebensversicherungsbank für Deutschland; it proved itself capable of breaking down the indifference of the public, a fact doubtless due in no slight degree to the reputation of its founder and the prosperity of his fire insurance undertaking.

The new company only insured amounts at death and for terms of years, further limiting its acceptances to sums of not less than 500 and not more than 5,000 thalers, and it adopted the Equitable

[1] Above, p. 227.

[2] See Emminghaus, *Geschichte der Lebensversicherungsbank für Deutschland zu Gotha.*

Society's mortality table by Babbage, though in a modified form. Insurers in it had to be residents in Germany of the ages 15–60 years. It opened business with 794 members, representing an insurance of 1,390,000 thalers; and by taking over, two years later, the policy-holders of a Giessen concern which was wound up, it added considerably to its size.

The example was soon followed in other parts of Germany. Already in 1828 another life assurance undertaking was called into being,[1] at Lübeck, through the efforts of a merchant named Vermehren —the Deutsche Lebensversicherungs-gesellschaft. It was formed on the proprietary principle, with a capital of 1,275,000 marks current, but with a sharing of profits on the part of the insured. It not only offered more choice than the Gotha Bank in the matter of the form of insurance, but its limit of acceptance was 30,000 marks current; as to rates of premium, for ages under 40 it was higher, for ages over 40, lower. The number both of mutual and joint-stock companies in Germany afterwards steadily increased.

France,[2] despite the preoccupation of both Government and people with tontine-schemes,[3] enjoyed the distinction of being the first continental country to set up a life assurance office of its own, in the

[1] These two companies dispute the right to priority in life assurance history.

[2] See Gebauer, *Sogenannte Lebensversicherung*, pp. 83, 84; Karup, *Theoretisch-praktisches Handbuch der Lebensversicherung*, pp. 23, 24.

[3] It was estimated by Frederick Hendriks even as late as 1854 that the whole life assurance in force in France was not £1,000,000, whereas he put down the amount insured by the Associations Tontinières for deferred annuities and endowments payable during the lifetime of the insured at twenty times that sum: per Walford, art. "France, Life Insurance," *Insurance Cyclopædia.*

modern sense. In 1787 the Compagnie Royale d'Assurances sur la Vie was granted a perpetual concession by the King, with a monopoly for the first fifteen years, but for all the pains taken in organising it, it came to an end in 1792 in the storm of the Revolution.

Better success, however, attended a new venture which was sanctioned by a royal ordinance dated December 29, 1819, and shortly afterwards began business with the title Compagnie d'Assurances Générales sur la Vie.[1] It was joined in the following year by the Compagnie Royale (afterwards the Nationale), and in 1829 came the Union. New concerns continued to appear—there were six in the period 1841–65, like the earlier ones, all on the joint-stock principle—but for all that the real development in France belongs to comparatively recent times. The public was indifferent when not prejudiced, whilst the difficulties involved in obtaining governmental concession were not calculated to assist progress.

As for the rest of the Continent, just as the English companies had planted agencies in Germany, Holland, and Scandinavia, so the French companies pushed theirs into Spain, Belgium, Italy, and Switzerland. The first Austrian company, not counting the Assicurazioni Generali founded previously in Trieste, was the Wechselseitige Kapital- und Rentenversicherung, Vienna, 1839; Hungary's first company only dates from 1860, that of German Switzerland, the Schweizerische Lebens- und Rentenversicherungsanstalt, Zürich, from 1857. Denmark, Norway, and Sweden were all making their first steps in modern life assurance about the same time, namely 1842, 1847, and 1850, respectively. In Italy, on the other hand, the Compagnia di Assicurazioni di Milano came into being in 1826, whilst

[1] It based its operations on Duvillard's Table of Mortality.

the Societeit van Levensverzekering, founded as early as 1807, still exists in Amsterdam.

To look, finally, at the United States,[1] we find that in 1759 the Presbyterian Synods of New York and Philadelphia procured a charter for "A Corporation for the Relief of Poor and Distressed Presbyterian Ministers and of the Poor and Distressed Widows and Children of Presbyterian Ministers," and ten years later the clergymen in the communion of the Church of England in America, of New York, New Jersey, and Pennsylvania, organised similar institutions in each colony. These two enterprises, however, besides the fact of their denominational nature, were half charitable and only half insurance. In 1794 the Insurance Company of North America obtained a charter in Pennsylvania to do a general business including life assurance, but it never wrote much of the latter class of risk, and before long gave up this branch entirely; the establishment in 1807 of an office in Philadelphia by the Pelican Life Insurance Company of London was a much more important step in advance.

Meanwhile a project for an association called the Pennsylvania Company for the Insurance on Lives was maturing; it was ready for formal organisation in 1809, and marked the beginning of life assurance in the United States on a business basis. In its procedure it followed the English offices. In 1818 the Massachusetts Hospital Life Insurance Company was granted a charter; but as it was required to hand over to the Massachusetts Hospital a third of the net profits on its life business, perhaps it is not to be wondered at if very little life business was done. The New York Life Insurance and Trust Company, 1830, which was the next company to be organised, in its first nine years issued roughly two

[1] See *Yale Readings in Life Insurance*, pp. 77 sqq.

thousand policies. All these three concerns were joint-stock companies, the first two with capitals of half a million, the last with a capital of a million dollars; all three were formed to do life assurance and trust business, and in each case they have survived as prominent trust and banking houses, life assurance having disappeared from their activities.

The appearance of the New England Mutual Life Insurance Company of Boston in 1835, and the Girard Life and Trust Company of Philadelphia the year after, marks a new epoch. The success of the Equitable had brought the mutual principle to the front, and the New England Company was formed to carry on business on those lines. Difficulties placed in its way by the Massachusetts legislature prevented it for some years from beginning to write life assurance, and meanwhile the second-named—a joint-stock concern—took the first step by sharing the profits of the business with the policy-holders.

The mutual principle, once having received recognition, rapidly spread. In 1842 the Mutual Life of New York was organised; in 1843 the New England Mutual completed its arrangements, and in 1845 the Mutual Benefit of New Jersey obtained its charter, and the great development of life assurance in the United States began.[1]

[1] How rapid that development was, may be judged from the fact that at the close of 1869 there were one hundred and ten life assurance corporations in the United States, actively competing for business: *Yale Readings in Life Insurance*, p. 88.

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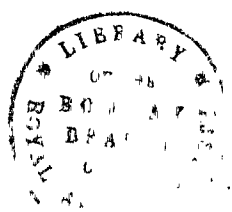

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